DOCUMENT RESUME

ED 263 489	CG 018 646

TITLE	Beer and Wine Advertising: Impact of Electronic Media. Hearing before the Subcommittee on Telecommunications, Consumer Protection, and Finance of the Committee on Energy and Commerce. House of Representatives, Ninety-Ninth Congress, First Session on H.R. 2526 and H.R. 1901.
INSTITUTION	Congress of the U.S., Washington, DC. House Committee on Energy and Commerce.
PUB DATE	21 May 85
NOTE	643p.; Some pages are marginally reproducible due to small print.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF03 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	*Advertising; *Alcoholic Beverages; Alcoholism; Broadcast Industry; *Federal Legislation; Hearings; *Mass Media Effects; Media Research; *Radio; *Television Commercials
IDENTIFIERS	Congress 99th

ABSTRACT

This document presents witness testimonies and prepared statements from the Congressional hearing called to examine the impact of broadcast alcohol advertising on alcohol-related problems, the responsibility of the broadcast media in shaping attitudes about alcohol, and how to reduce any negative impact of advertising. Statements were heard from committee chairman Timothy E. Wirth; from other committee members; and from John F. Seiberling, a Congressman from Ohio who testified in support of H.R.2526, the Fairness in Alcohol Advertising Act. Witnesses included the executive director, Center for Science in the Public Interest; an attorney from George Washington University Law School; the deputy director of the Bureau of Alcohol, Tobacco, and Firearms; a Michigan State University professor of Communications and Television; and the assistant director of the Social Science Institute, Washington University. Also testifying were the presidents of the National Association of Broadcasters, the Wine Institute, the United States Brewers Association, the Association of Independent Television Stations, the American Advertising Federation, and the National Radio Broadcasters Association; and representatives from the Television Operators Caucus, Inc., the Survey Research Center at the University of Michigan, the American Civil Liberties Union, the National Congress of Parents and Teachers, and two brewing companies. Witnesses discussed a variety of positions on alcohol advertising, bans and restrictions on advertising, voluntary efforts by the media to prevent alcohol abuse, and research on the effects of advertising. Prepared statements, supplemental testimonies, and additional materials are included throughout the text. (NRB)

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BEER AND WINE ADVERTISING: IMPACT OF ELECTRONIC MEDIA

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS, CONSUMER PROTECTION, AND FINANCE

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 2526

A BILL TO AMEND THE COMMUNICATIONS ACT OF 1934 TO REQUIRE THAT WHEN ANY ALCOHOLIC BEVERAGE IS ADVERTISED ON TELEVISION, RADIO, OR CABLE, EQUIVALENT TIME SHALL BE PROVIDED FOR PUBLIC SERVICE ANNOUNCEMENTS AND PROGRAMMING REGARDING ALCOLOL CONSUMPTION AND MISUSE

AND

H.R. 1901

A BILL TO PROVIDE FOR A STUDY REGARDING THE RADIO AND TELEVISION ADVERTISING AND PROMOTION OF ALCOHOLIC BEVERAGES AS WELL AS OTHER MEDIA, AND FOR OTHER PURPOSES

MAY 21, 1985

Serial No. 99–16

Printed for the use of the Committee on Energy and Commerce

U.S. GOVERNMENT PRINTING OFFICE
50-401 O WASHINGTON : 1985

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BEER AND WINE ADVERTISING: IMPACT OF ELECTRONIC MEDIA

TUESDAY, MAY 21, 1985

House of Representatives,
Committee on Energy and Commerce,
Subcommittee on Telecommunications,
Consumer Protection, and Finance,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2322, Rayburn House Office Building, Hon. Timothy E. Wirth (chairman) presiding.

Mr. Wirth. The subcommittee will come to order.

Our hearing this morning focuses on the impact of broadcast alcohol advertising on the Nation's many alcohol-related problems. It is an extremely controversial issue, often filled with a good deal of rhetoric.

We are here today to try to move away from the rhetoric toward a more thorough analysis.

This is not a new issue. It did not just surface a few months ago. Back in the late 1930's, Senator Edwin Johnson introduced legislation to ban alcohol advertising on radio. Johnson was introduced by Harry S. Truman, who noted that the Colorado Senator had something important to say. Johnson replied that he did not have anything important to say, he was just going to make a speech.

According to the Congressional Record of August 3, 1939, Senator Johnson commended both the National PTA and the National Association of Broadcasters for their support of a total ban on radio advertising of alcoholic beverages. That was, of course, a long time ago. We have representatives from both groups with us today, but I have a feeling that now, 46 years later, there may be slightly less agreement between these two associations.

When this issue again came to the forefront a few months ago, the question posed was whether beer and wine ads should be banned from television and radio. There was agreement that there are quite a few alcohol advertisements on TV and radio, as well as far too many alcohol-related problems in society.

The key question was whether there was a causal relationship between the two. That question is still very much with us, but with an additional focus: whether advertising for beer and wine presents only one side of the issue of alcohol consumption, placing drinking in a positive light. If that is so, should there be an opportunity for the presentation of views relating to negative aspects of alcohol consumption?

There are a lot of questions for which I have no easy answers. Should broadcasters be required to present ads that provide information about problems related to alcohol consumption? Is it necessary to find a causal relationship between ads and abuse to answer "yes" to that question? If all agree that educating the public about alcohol problems is important and necessary, should such messages be mandated or are voluntary efforts by the broadcast industry sufficient?

We must consider a number of other questions as well. If counterads are to be mandated, where does one draw the line in terms of products subjected to counterads? What about ads for food products, drugs or cosmetics? If we start down such a path with beer and wine ads, where does it stop?

If there is a requirement in this case for counterads, what would be the economic impact on the broadcast industry, particularly in terms of its ability to provide certain types of programs? How does the enhanced constitutional protection afforded commercial speech in recent years affect our analysis of this issue?

Many factors influence how our attitudes about alcohol use develop and why some people become alcoholics. Peer pressure and parental attitudes clearly contribute. Many believe that the mass media also influence our attitudes about alcohol.

Today's focus is on the responsibility the broadcast media have in shaping our attitudes and what steps, if any, need to be taken to reduce any negative impact. In this regard, I want to commend the broadcasters on the steps they have taken to reduce drunk driving during last winter's holiday season, with regular warnings of the dangers of alcochol abuse and drunk driving, and during Operation Prom Night.

Broadcasters around the country are now taking their public trustee responsibilities in this regard very seriously. It is gratifying to see this responsiveness to community needs.

Imposing mandatory counterads or bans are not actions that the Government can take lightly. Those requesting such actions clearly have the burden of making their case.

Today we will hear from individuals on all sides of this issue. We will seek to establish whether there is, in fact, a problem caused by broadcast alcohol advertisements and, if so, what the proper response of all of us might be to deal with the problem.

Mr. Swift.

Mr. Swift. It it my understanding that our colleague, Mr. Seiberling, has another meeting, and I would be happy to defer my opening statement until after his testimony if that would help.

Mr. Wirth. If that is agreeable, Mr. Seiberling.

Our first witness is our distinguished colleague from the State of Ohio, John Seiberling.

John, welcome; and thank you very much for being here.

Mr. Seiberling. Thank you very much.

Mr. Wirth. We will include your statement in full in the record.

STATEMENT OF HON. JOHN F. SEIBERLING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Seiberling. Thank you. I will attempt to be brief.

Mr. Chairman and colleagues, I really appreciate the opportunity to be here today at this hearing on the impact of alcohol advertising and speak on behalf of H.R. 2526, the Fairness in Alcohol Advertising Act, which I introduced last week.

This bill would require that when any alcoholic beverage is advertised on television, radio or cable, equivalent time shall be provided for the presentation of messages regarding the various adverse affects that may be attributable to consumption and misuse of alcohol.

I introduced this bill because I believe, as I am sure all of you do, that one of the most serious problems afflicting our society today and threatening the health, safety and productivity and quality of life of many Americans is the misuse of alcohol.

I will let others here today testify about some of the specific adverse consequences of alcohol misuse, but suffice it to say the problem causes immense suffering for millions of people and costs our Nation billions of dollars every year.

There are certainly many factors that are responsible for the alcohol problem in this country: stress, family influence, peer pressure and lack of information on health effects, just to mention a few. But whatever the other factors, it is clear that the nature of alcohol itself has a big role.

Unfortunately, you would never know the extent of the problem from viewing the large number of slick advertisements promoting the sale and consumption of alcohol which are saturating the air waves. These give the impression that alcohol is the road to a better, more enjoyable life, not the doorway to trouble and tragedy that it really is.

Let me emphasize that I do not believe that beer and wine commercials promote the misuse of alcohol, nor do I think that these ads directly cause such misuse. However, it is undeniable that by portraying happy, successful, healthy people drinking wine and beer, these ads do project the image of a total lifestyle which appears enviable. They are thus influential, especially on impressionable young people.

The influence of such commercials may be subtle, but it is real and powerful, nevertheless. The Fairness in Alcohol Advertising Act addresses the need to offset these images of glamorous lifestyles and to show that, unfortunately, there is a dark side to alcohol.

H.R. 2526 would amend the Communications Act to specifically provide that in order to air commercial messages promoting alcoholic beverages, a radio or television licensee or cable operator must ensure that equivalent advertising time for the broadcast of counterbalancing messages is given to responsible spokespersons.

Under the bill, those spokespersons would receive only the free air time. They would have to bear their own production and other costs. The bill is not intended to allow the disparagement of any particular brands but to allow the fullest possible discussion of the problems associated with alcohol in general. Nor is it the intent to detract from the many existing public service announcements dealing with community needs and problems other than those associated with alcohol.

Broadcasters are doing a great service to their communities by providing these messages, but my bill specifically states that the alternative alcohol messages required by the bill may not be used to discharge the broadcasters' public interest obligations in other areas.

I would like to make it clear that I am opposed to prohibition and I am not seeking a ban on either the product or the alcohol ads themselves. In introducing this bill, I am not saying that people should become teetotalers. I am not a teetotaler. But I do think people should know about the risks associated with drinking.

I recognize that the wine and beer industry and the broadcasting industry share the concern about the misuse of alcohol and have responded positively by mounting campaigns against it, and while these are commendable, I do not think, however, they are reaching a sufficiently wide audience or covering a sufficiently broad range of problems associated with alcohol consumption.

The public needs to be better educated regarding the many risks associated with alcohol when it is consumed even in modest amounts. Alcohol is a mind-altering drug and can affect the body in many disruptive ways. There is hardly any organ, tissue or function of the body that is immune to alcohol's damaging effects.

The challenge facing us is to come to grips with this problem, but I do not pretend that this legislation offers a full answer. In fact, one would have to come up with a bill to prevent human folly in general to prevent the misuse of alcohol. But H.R. 2526 is a step forward and I hope that it provides a focus for your deliberations here today and also the opportunity for a wider public discussion of this issue.

I think H.R. 2526 would help deter individuals from becoming problem drinkers. The journey of 1,000 miles starts with the first step, and the alcoholic becomes one only after he starts with that first drink; so it does seem to me that it is time to focus on the total problem.

I have, of course, received many letters opposing this bill from the broadcasting industry and also from the wine and beer industry. These folks are entitled to a fair and balanced legislative hearing, which I know they will receive from your committee, Mr. Chairman. My bill is simply intended to aid this hearing process and provide a focal point and, hopefully, result in some legislation that will move on this serious problem.

I would be happy to answer any questions.

[The prepared statement of Mr. Seiberling follows:]

Statement of
CONGRESSMAN JOHN F. SEIBERLING

in support of HR 2526
The Fairness in Alcohol Advertising Act

before the Subcommittee on Telecommunications,
Consumer Protection and Finance
May 21, 1985

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to be here today at this hearing on the impact of alcohol advertising, and to speak on behalf of HR 2526, the Fairness in Alcohol Advertising Act. This bill, which I introduced last week, would require that when any alcoholic beverage is advertised on television, radio, or cable, equivalent time shall be provided for the presentation of messages regarding the various adverse effects that may be attributable to consumption and misuse of alcohol.

I introduced this bill because I believe, as I am sure that all of you do, that one of the most serious problems afflicting our society today and threatening the health, safety, productivity, and quality of life of many Americans is the misuse of alcohol.

Alcohol is a dangerous and addictive drug, but unfortunately, many people do not understand that. As a result, this nation suffers hundreds of thousands of alcohol-related deaths and serious injuries every year. In addition to drunk driving accidents, alcohol misuse often plays a role in incidents of child and spouse abuse, suicide and crime. Alcohol can also have serious adverse health consequences and has been linked to birth defects, liver disease, heart disease and several forms of cancer, to name only a few. All of this causes immense suffering for millions of people and costs our nation billions of dollars every year.

One of the saddest aspects of the alcohol problem is that it is reaching epidemic proportions among many young people. Alcohol is the drug of choice for many teenagers. According to the National PTA, of the estimated 13 to 15 million alcoholics and problem drinkers in the U.S., more than 3 million are under the age of 18.

There are certainly many factors that are responsible for the alcohol problem in this country — stress, parental behavior and influence, peer pressure, and lack of health information are just some. But whatever the other factors, it is clear that the nature of alcohol itself plays a big role. Unfortunately, you would never know the extent of the problem from viewing the large number of slick advertisements promoting the sale and consumption of alcohol which are saturating the air waves. These give the impression that alcohol is the road to a better, more enjoyable life, not the doorway to trouble and tragedy that it really is.

As a parent concerned about the youth of this country, as someone who observed at first hand the birth of Alcoholics Anonymous fifty years ago, as a preventive health advocate who believes in the importance of fitness, good nutrition and health education, and as a member of Congress who feels we have a responsibility to help create and maintain a healthier and safer society for everyone, I think it is time we took effective action to see that the public is given all sides of the picture about alcohol and the perils of alcohol use and misuse.

Essentially, HR 2526 adopts the Fairness Doctrine approach. Currently, the Fairness Doctrine requires that when a broadcast or cable station presents one side of a controversial issue of public importance, the station must afford a reasonable opportunity for the presentation of contrasting points of view. However, in 1974, the Federal Communications Commission found that standard product commercials do not trigger the Fairness Doctrine right to presentation of a contrasting view. The Fairness in Alcohol Advertising Act does not overturn that decision but simply recognizes that alcoholic beverage advertisements promote a special kind of product which present unique problems thus requiring separate and unique treatment.

The bill amends the Communications Act to specifically provide that in order to air commercial messages promoting alcoholic beverages, a radio or television licensee or a cable operator must ensure that equivalent advertising time for the broadcast of counterbalancing messages is given to responsible spokespersons. Under the bill, those spokespersons would receive only the free air time; they would have to bear their own production and other costs.

I think that broadcasters are currently doing a good job of complying with the Fairness Doctrine in terms of the many controversial issues facing American society today. I know that it is not always an easy task and I commend them for their efforts. This bill is not intended to force broadcasters now to give their air waves over to outside parties for whatever messages those parties may wish to convey. The bill's language attempts to give broadcastors and cable operators reasonable discretion in meeting their new responsibilities required by the bill. The bill also requires the FCC, in consultation with both the Bureau of Alcohol, Tobacco and Firearms and the Public Health Service, to issue guidelines to help broadcasters carry out their obligations under this bill.

This bill is not intended allow the disparagement of any particular brands of beer and wine, but to allow the fullest possible discussion of the problems associated with alcohol in general. Nor is it the intent of this bill to detract from the many existing public service announcements dealing with community needs and problems other than those associated with alcohol. Broadcasters are doing a great service to their communities by providing important messages on behalf of many different causes including Red Cross, United Way, hunger and disaster relief, voter education, job training and many others. My bill specifically states that the alternative alcohol messages required by the bill may not be used to discharge the broadcasters' public interest obligations in other areas.

The bill defines alcoholic beverage advertisement as programming which is intended to promote the purchase or consumption of alcoholic beverages and for which air time is purchased from the broadcaster. Excluded from this definition are announcements which are limited simply to sponsor identification of a program, such as the recognition given corporate sponsors of PBS programs. Alcoholic beverage is defined in this bill as it was in last year's amendment to the Highway Safety Act establishing a national minimum drinking age.

With regard to the equivalent time requirement, this bill looks to the approach now followed regarding the use of broadcast time by candidates for public office. The Fairness in Alcohol Advertising Act provides that the counterbalancing messages be afforded air time which is of equal duration to that used for the presentation of alcoholic beverage advertisements, and which has an audience size and composition approximately equivalent to that received by the alcoholic beverage advertisments. These requirements ensure that the counterbalancing ads can't be lumped together into one big spot and aired at 2:00 a.m.

I realize that this equivalent time standard goes beyond the reasonable opportunity standard which is applied to other issues under the Fairness Doctrine. However, I don't think that any other issue receives the same significant amount of time for its promotion as the commercials for alcoholic beverages now do. Thus, I believe that this imbalance justifies the requirement of equal time.

Let me emphasize that I do not believe that beer and wine commercials promote the misuse of alcohol, nor do I think that these ads directly cause such misuse. However, it is undeniable that by portraying happy, successful, healthy people drinking wine and beer, these ads do project the image of a total lifestyle which appears enviable. They are thus influential, especially on impressionable

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young people. The influence of such commercials may be subtle, but it is real and powerful, nevertheless. As Rose K. Goldsen, Ph.D., a professor of sociology at Cornell University has written:

> "Conventional wisdom insists on establishing a measurable connection between exposure to the ads and drinking as 'proof' that they do anything at all. But we miss the culture-shaping power of commercials if we think that's how they do their main work. Not many children are likely to respond to a beer commercial by dashing to the nearest bar for a beer on draft, nor is it our custom to admit kids to bars. But since it is our custom to beam the bars into our homes every day, it's hard to grow up in this country without learning the advertisers' glamorized versions of the culture of bars and how delightful are those grownup lifestyles that drinking so enhances.
>
> All children aspire to adulthood and prepare for it by trying out the various behavioral repertoires their environment makes familiar and paints as admirable. That environment is now saturated with repertoires picked up from TV, including the substantial input made by commercials glamorizing drinking."

The Fairness in Alcohol Advertising Act addresses the need to offset these images of glamorous lifestyles and to show that, unfortunately, there is a dark side to alcohol.

I know that the wine and beer industries and the broadcasting industry share the concern about the misuse of alcohol and have responded positively by mounting campaigns in schools and on the air against alcohol abuse. However, most of their efforts have focused on drunk driving and while these efforts have been commendable, I don't think they are reaching a sufficiently wide audience or are covering a sufficiently broad range of the problems associated with alcohol consumption. Let me emphasize here that I am talking about consumption even in relatively modest amounts and not just the grossly excessive consumption usually comprised under the terms "abuse" or "misuse." The public needs to be better educated regarding the many risks associated with alcohol consumption. Alcohol can affect the brain and body in many disruptive ways. There is hardly any organ, tissue or function of the body that is immune to alcohol's damaging effects.

I want to make clear that I am opposed to prohibition. I am not seeking a ban on either the product or on the alcohol ads themselves. And in introducing this bill, I am not saying that people should become teetotalers. But I do think people should know about the risks associated with drinking, even in moderate amounts.

The challenge facing us is to come to grips with the national tragedy of alcohol misuse and the dangers it poses to health, safety, family life, mental acuity and social development. I don't pretend that this one piece of legislation offers the full answer. But it is a step forward. This bill would provide an opportunity for a wider dissemination of responsible information regarding the dangers or alcohol misuse. It seeks to increase the public's knowledge and understanding of the many risks and consequences associated with alcohol misuse and to educate high risk populations, such as pregnant women, alcoholics and adolescents about the special concerns and risks associated with the consumption of alcoholic beverages. Finally, I think that enactment of this bill would not only help deter individuals from becoming problem drinkers, but also help discourage minors from using alcohol and teenagers and young adults from developing lifestyles which include excessive alcohol consumption.

I have, as you might suppose, already received numerous letters and visits from people in the broadcasting industry, as well as the beer and wine industry, opposing my legislation and raising many questions and objections. All of them are entitled to careful consideration and should be evaluated through this kind of thorough and balanced legislative hearing in which all sides have an opportunity to make their case. My bill is intended to aid this hearing process, and provide a focal point. Surely all points of view can only benefit by a full and frank public discussion of this very real and important issue.

Thank you again for giving me this opportunity to testify.

Mr. WIRTH. Mr. Seiberling, thank you very much, and we certainly appreciate your interest and concern for this important issue. I know you have a very busy morning ahead of you.

Let me ask my colleagues what questions they may have.

Mr. Swift.

Mr. SWIFT. No questions at this time.

Mr. WIRTH. Mr. Nielson.

Mr. NIELSON. Mr. Seiberling, just one question. You are aware that I have a bill which is a study rather than a ban or a counter-advertisement. Have you had a chance to look at my particular bill?

Mr. SEIBERLING. No, I have not. In fact, I was not aware that you had such a bill, and I will take a careful look at it.

Mr. NIELSON. You mentioned that you feel that the broadcasters are not doing a sufficient amount to talk about the abuse of alcohol. Do you believe they are doing a good job in saying that you should not drink at all? Are they promoting drinking among adults and youth, in your view?

Mr. SEIBERLING. Well, I think they are doing a fairly good job on alcohol abuse, although the amount of broadcast time used for this purpose, as I understand, is about 3 percent of the amount that is devoted to alcohol advertising.

I would not go so far as to say that we should have advertising promoting a total abstention. I think that is up to the individual. But it should be an informed individual who knows the full risks of alcohol consumption. For example, pregnant women can damage the fetus by drinking even as much as one drink a day, a glass of wine a day. How many women know that fact and have it borne home to them? That is the kind of information that I think needs to be gotten out, not just alcohol misuse but the total risk spectrum.

Mr. **Nielson**. Thank you.

Mr. **Wirth**. Mr. Oxley.

Mr. **Oxley**. John, you would not support then, I understand, a total ban on beer and wine advertising?

Mr. **Seiberling**. I think that would be going much too far. In fact, it would be the opposite of what I would promote. My bill extends free speech by giving all parties the opportunity to be heard and not just those who can afford to pay the freight.

Mr. **Oxley**. In light of recent developments in the field of counteradvertising, or at least the informational campaign that, as I understand, we are going to see some examples of later this morning, isn't that action on the part of the broadcasters taken under their own initiative, not mandated by the Federal Government, a better approach and a more effective approach than your legislation?

Mr. **Seiberling**. If they were devoting equal time, I would say it would be as good an approach and better, since it is voluntary; but 3 percent of the total time is not, I consider, to be a balanced presentation. Furthermore, their ads focus on alcohol abuse, which is commendable, but that is only part of the picture.

Long before a person becomes an alcohol abuser, he usually starts off drinking in moderation and gradually builds up, and even that produces some adverse effects on his mind and body. So it does seem to me that that picture needs to be brought out.

Mr. **Oxley**. How many cosponsors do you have on your bill?

Mr. **Seiberling**. I don't have any that I know of. I only introduced it about—today is Tuesday—about 6 days ago. I have not circulated it yet for cosponsors.

Mr. **Oxley**. Thank you, Mr. Chairman.

Mr. **Wirth**. Mr. Moorhead.

Mr. **Moorhead**. I have no questions.

Mr. **Wirth**. Mr. Luken.

Mr. **Luken**. No questions.

Thank you, Mr. Seiberling.

Mr. **Seiberling**. Thank you.

Mr. **Wirth**. Mr. Scheuer.

Mr. **Scheuer**. I have no questions, but I do want to commend my colleague for his leadership for delving into this matter and bringing this information and his very thoughtful and sensitive insights to the attention of our committee.

Mr. **Seiberling**. Could I volunteer one more point, Mr. Chairman? You will hear claims that this is an infringement of freedom of the press and freedom of speech. I have taken a look at the Supreme Court and other decisions, and clearly it is within the permissible ambit of constitutional law and Federal regulation. It is commercial speech, which is not protected to the same degree as noncommercial speech.

There is an important public interest to the health and safety of the public involved, which gives Congress the basis for reasonable regulation. And of course, the electronic media are clearly not given the same degree of freedom as the print media, and there are plenty of precedents, which I am sure the chairman and this committee are aware. I think it is important to get that in the record.

Mr. WIRTH. Mr. Seiberling, thank you very much. And as you pointed out, your legislation will be the focus of a great deal of discussion this morning and later. We appreciate your being here and your very constructive additions to the debate on this subject, as always.

Mr. SEIBERLING. Thank you.

Mr. SWIFT. I think it would be useful to place into the context of our discussion this morning what broadcasters have been doing with regard to this difficult national issue. I think probably the organization which really raised this to a broad level of public awareness was Mothers Against Drunk Driving, and I think two types of institutions responded very effectively to MADD's concerns, one being legislatures throughout the States, and the other the broadcasters, who I think took that message and amplified it enormously.

This, I would like to point out, was done before, really, this particular proposal came to the front. To demonstrate that, I would like to, with the permission of the Chair, present a videotape, which will do two things. First, it will present a public service announcement which was produced by the Washington State Association of Broadcasters and carried by all of the television stations in the State, and the sound track was used as a radio spot on all of the radio stations in the State, drawing the public's attention in a very creative way to a tough new State law that had been passed with regard to drinking and driving.

The second presentation is actually a compilation of an overall program or series done by KOMO Television in Seattle. It is not one program. It is excerpts from public service announcements, from special prime time programs, from regularly scheduled programs that devoted a portion of their time to the issue and so forth.

I think both of these will give some idea of typical responses that broadcasters made on this issue prior to the kind of proposal that we are looking at today being made.

With that, Mr. Chairman, I would ask that that presentation be made.

[Video presentation.]

Mr. SWIFT. Thank you, Mr. Chairman.

Mr. WIRTH. Mr. Nielson.

Mr. NIELSON. Thank you, Mr. Chairman. That's a hard act to follow.

I would like to thank the chairman for holding this hearing on the most timely subject of beer and wine advertising. It seems almost everyone has an opinion about this issue and almost no one is neutral about it.

One thing that everyone agrees upon is that alcohol abuse and drunk driving have become a problem of major proportions in this country. There is an increasing sentiment in the country that beer and wine advertising, particularly in TV and radio, may be contributing to the problem. Some individuals advocate an all-out ban on beer and wine commercials on TV and radio, and others have, as Congressman Seiberling, recommended counter advertising.

The debate presently centers on the prospect of mandatory equal time for alcohol counter ads, whether commercial speech should be subject to any fairness doctrine, as is political speech. Either a ban or mandatory equal time would be somewhat drastic until more conclusive scientific evidence is obtained.

I also recognize the seriousness of the alcohol problem in this country and the growing concern of the American people, and that's why I introduced H.R. 1901, which I feel is a good and equitable approach to the problem. So much controversy and emotion surround this issue. Economic resources, free speech all play vital roles.

It is important that we take steps only after as much scientific evidence as possible. My bill would require a study to be completed by the Bureau of Alcohol, Tobacco and Firearms with input from the SEC and the Surgeon General.

The study would examine the extent to which beer and wine advertising encourages consumption of alcohol, particularly by the youth and problem drinkers. It would examine other promotional practices which encourage consumption of alcohol. It would examine the extent to which such advertising and other promotional practices are subject to private industry self regulation, and, if so, the extent of such regulation.

It would also examine the extent to which other forms of public information may neutralize or reduce any adverse effects of such advertising and promotion. The study would take a year, at the end of which a report would be made to Congress with recommendations for legislation or administrative action.

As a professor of statistics, I recognize the value of having scientific information before taking actions that can have very far-reaching consequences. The study would determine if action needs to be taken and, if so, what approach would be the most productive.

I hope my colleagues will support me in my endeavor to find a fair, equitable, and reasonable approach to this problem. I hope the hearing today will help us gain insight and valuable knowledge.

I thank the chairman for his holding the hearings, and I look forward to hearing from the witnesses.

Mr. WIRTH. Thank you, Mr. Nielson.

Mr. Luken.

Mr. LUKEN. Thank you, Mr. Chairman.

In this whole area of alcohol abuse, there seems to be encouraging signs abroad. We read certain articles in the media. We might believe that a revolution is brewing in America. Americans are drinking less and perhaps enjoying life more. Excessive drinking is being questioned. Laws are being passed to ban happy hours.

I just read an editorial in my own daily paper today, "Pub Calls for Charity." Perrier is in, and physical fitness. Young people are meeting at health spas rather than bars or restaurants. Drinking seems, from popular network programs, to have been cut down, and new themes, as we have seen some evidence of that here today, as to the effects of alcohol abuse are becoming popular. Even Time Magazine had a cover story about alcohol abuse, as it characterized it, "a sobering reversal of America's long-standing love affair with a social sip or two."

I noted the other day that the Soviet Union, which has one of the most serious drinking problems of any nation in the world, has initiated a new crackdown on alcohol abuse, raising the drinking age from 18 to 21, delaying the opening of liquor stores on workdays, increasing fines for public drunkenness, and even gradually reducing the production of vodka.

In short, the American public is being treated to something of a media blitz on this subject, and I think the American people are reacting to it.

Now, this brings us to the question: Should we ban all beer and wine commercials? And what effect will that have? Will it actually result in a decline in drinking and alcohol abuse? We will hear more about that today.

We learned in prohibition that there did not seem to be any effect upon drinking habits of total prohibition. Surveys would tell us that people want to prohibit others from drinking; on the other hand, in Ohio just last year, we had a vote on raising the drinking age to 21, and all of the registered voters of Ohio were allowed to vote. Overwhelmingly, the people of Ohio spoke after quite a public debate and said they were not in favor of raising the drinking age from 18 to 21.

I think all of this reflects the swings in public opinion, in tastes in a free society. I would come down on the side, if we are to err in this matter, on the side of erring in favor of freedom of speech and expression. I am not even, Mr. Nielson—as much as I appreciate your suggestions—I'm not even sure I'm too interested in the surveys because I think we are talking about matters that are in the common experiences of men and women, matters of taste and expression, literature, religion, these things that are in common experience, and I don't think the surveys or the studies are going to do us much good.

Nevertheless, the suggestion has been made that alcohol is not inherently evil. I think that's the general conclusion that we would come to. It is subject to abuse.

I thank the chairman for bringing on this hearing so that we can consider whether this would have any effect upon such abuse.

Thank you, Mr. Chairman.

Mr. **Wirth**. Thank you, Mr. Luken.

Mr. Oxley.

Mr. **Oxley**. Thank you, Mr. Chairman.

I commend you for calling this hearing today to discuss and, I hope, put to rest the issue of beer and wine advertising on television and radio, although I sincerely doubt we will be able to put it to rest with one hearing.

We have heard a great deal about this issue in the last several months. All of our offices have been deluged with briefing papers and telephone calls, and all of us have heard from our constituents on both sides of this important issue.

Unfortunately, however, as is often the case with issues as widely publicized as this one, the arguments have become emotional and the issue has become distorted. Many times the discussion seems to focus not on advertising itself but rather on drinking per se.

We have already had discussions about the two bills that have been introduced on this subject—the first one by my colleague, Mr. Nielson, and the other one, of course, by Mr. Seiberling, who has already testified.

I would also comment that the Nielson bill, which I have cosponsored, is I think, a precursor to further legislation. I think it is fair to say that it would be impossible for us, would be unfair of us—indeed, irresponsible for us to move on any type of ban legislation or even the type of legislation that Mr. Seiberling has introduced without coming to a conclusion on the facts of the matter, and that is exactly what the Nielson bill seeks to do.

I look forward to the panelists' discussion of both of these legislative approaches as well as the total ban, and their views of which they find to be preferable, or if, indeed, any legislation at all is necessary in this area.

I believe there are some real first amendment problems with an outright ban and would certainly be interested in the witnesses' comments as to how that concern can be resolved. This promises to be a most interesting and informative hearing, and I look forward to a frank exchange of views on this important issue.

Mr. WIRTH. Thank you, Mr. Oxley.

Mr. Moorhead.

Mr. MOORHEAD. Thank you, Mr. Chairman.

I want to congratulate you for setting these hearings this morning. Certainly the misuse of alcohol and drugs in the United States has become a major problem for our country, and drunk driving is the major cause of death among large portions of our population.

I do think, however, that banning television advertising for beer and wine is not necessarily the most productive way in which we can attack this problem. I think that ABC and some of the networks, some of the private stations have done an outstanding job in educating the public on the misuse of alcohol in our country, and I think that's the point that we have to get across to the general population.

Most people feel that they can take a drink and be able to handle it and use as much as they want to without suffering serious harm, but I think each one of us has had in our own family and friends experiences that indicate that you can't always do that.

I think we will get from this hearing a better idea of exactly what radio and television advertising do or can do and perhaps have a little better opinion after our hearings as to what direction we should take. But frankly, at this particular point I think we have to have serious penalties for drunk driving, we have to make sure that people who take others' lives are adequately punished, and we have to see that the public is educated.

I don't think we need to violate the rights under the first amendment to constitutional freedom of speech and press.

Mr. WIRTH. Mr. Scheuer.

Mr. SCHEUER. Thank you very much, Mr. Chairman.

I, too, want to commend you for holding this hearing. The nexus, the link between television and television advertising and smoking and drinking, and especially those 11 million Americans for whom alcoholism is a crippling and disabling disease, is yet to be explored in depth, and I congratulate you for giving this forum over to that purpose.

There is no doubt—it's a truism to state that television is the most phenomenal education and entertainment tool the mind of man has ever devised. It is the most powerful invasive device in terms of invading our minds and almost forming our views and our opinions and our reactions.

We would be very leery of minds being molded on the subject of alcohol.

I think one of the things we have to determine is whether there is a cause and effect relationship, what the scientists call a linear relationship between television advertising and young people drinking who weren't drinking before. Is this just a question of inducing young people to switch brands or are they really out to enlarge the pool, not just rearrange the slices.

These are the things that we have to talk about today, Mr. Chairman.

The problem is large. We suffer in this country almost 60,000 deaths a year through alcoholism, about 45,000 from accident deaths, another 10,000 or 11,000 from suicides, and the rest from cirrhosis of the liver. So it is a major problem. And for the 11 million of us who are crippled and disabled by alcoholism from leading normal, independent, fulfilling lives, it is a pitiful problem both for them and for their families and for society.

The costs of alcoholism are astronomical, so we are meeting here on a very, very important subject. Our minds are open, we are eager to learn, and again, I thank you for the opportunity of enlarging my knowledge on this desperately important subject.

Mr. **Wirth**. Thank you very much, Mr. Scheuer.

Let me ask my colleagues to please speak into the microphones. We have a lot of electronics plugged into a weak strong system, and you will have to speak directly into the microphone.

Mr. Coats.

Mr. **Coats**. Thank you, Mr. Chairman.

I have a statement which I would like to submit for the record and I wish to briefly summarize it so we can get to the witnesses.

As ranking Republican member on the Children, Youth and Family Committee, I would like to inform this committee that we have held a series of hearings on the subject of alcohol and its impact on families. We have been particularly interested in the apparent links between the different types of social behavior and alcohol. It is a subject of intense concern not only for members of that committee, but also members of this committee and all of us in Congress.

I think it is important that we take the time and make the effort to thoroughly examine this question.

Of the three basic legislative proposals before us, I don't believe any of us can with any certainty state that one is preferable. For that reason I think it is important that we take an in-depth and detailed look at these various proposals and their impact and effect.

I want to commend all those communities across the country, including Fort Wayne, IN, the community that I represent, and others for the increased awareness and attention they have been giving to the problem. Our local broadcasters have joined with a community effort to promote a number of initiatives designed to make young people and families aware of the problems of drinking, and drinking, and driving.

It is the whole idea of prevention, I think, that is so critical, yet often overlooked, that we need to pursue. It is one of the strategies, in fact, the main strategy, that our Committee on Children, Youth and Family are promoting.

Chairman Miller and I have jointly sponsored a project with other Members of Congress to show the excellent documentary, "One Too Many," in high schools throughout the country. Over 40 Members of Congress have received copies of the film to show in their districts. In my own community, most of the high schools have received the film and approximately 9,000 students have already seen the film. It is my understanding it is going to be aired on national TV in prime time this evening.

It's an excellent, excellent film. It comes at a very timely point in the high school cycle, near graduation. It points out some of the very serious problems connected with alcohol, and drinking and driving today. So I think all of us, regardless of the outcome of this hearing or the outcome of any legislative efforts that will be made in the next year or so, ought to be pleased with the increased awareness of the potential problems that we are facing and the need to address these in a constructive way.

I look forward to hearing the witnesses and their evaluation of the effects of alcohol beverage advertising. I am sure we are going to continue our work on the Children, Youth, and Family Committee on the same line. I thank the chairman for calling this hearing today.

[Mr. Coats' prepared statement follows:]

STATEMENT OF HON. DAN COATS

I want to commend Chairman Wirth today for calling this hearing on the subject of "beer and wine advertising." Growing attention is being focused on the alcohol advertising issue. This can be partially attributed to the fact that it is increasingly apparent that many of the social ills that trouble America today are related to alcohol abuse. The potential relationship, which may or may not exist between alcohol advertising and alcohol abuse, is what I see as one of the principle reasons for holding this hearing today.

Three proposals have been recommended: (1) a comprehensive study of the problem to be conducted by the Bureau of Alcohol, Tobacco, and Firearms with findings and determinations to be submitted by the Surgeon General and other federal agencies; (2) mandated counteradvertising; and (3) a complete ban on alcohol advertising. From the subcommittee's agenda for today, I am sure we will get an excellent overview of this issue, and I look forward to hearing from our distinguished list of witnesses.

Mr. Chairman, as the ranking minority member of the Select Committee on Children, Youth, and Families, I have seen many of the problems of alcoholism and its effect on the family. We have taken steps to address these problems by exploring preventive strategies and attempting to objectively measure the extent of these social ills. Personally, I think the best avenue is in changing attitudes because attitudes are the key to our behavior. But in order to do that, we must first understand whether advertising plays a role in the formulation of attitudes that leads to socially undesirable behavior.

At this time, I would like to briefly mention a program that has been initiated in northeastern Indiana that is an excellent model for alcohol abuse prevention.

Our community has joined an effort by broadcasters to promote Operation Prom/Graduation in some unique ways. The goal is to get high school juniors and seniors to sign cards pledging not to drink and drive during the 1985 prom/graduation season, nor ride with any student who has been drinking alcohol and driving.

In Fort Wayne, ten radio and all five television stations are working together to promote this program. Students can then be eligible for discounts at over 100 locations around town. In addition, local television and radio stations, plus four associations—floral marketing, new car dealers, restaurant owners and soft drink manufacturers—are each contributing cash amounts for an award that will be given to the school with the largest accident free participation in the program to help offset the cost of next year's prom and graduation expense.

This effort, led by WTPA-TV Fort Wayne General Manager and Indiana Broadcasters' Association head Ed Metcalfe and Bob Elliott, General Manager of WQHK and WMEE radio, is a high profile effort. It will also undoubtedly have long-term impact on the attitudes of the students who participate as well as those younger and older who become aware of the program.

In addition, the Students Against Drunk Driving (SADD) organization had a SADD test on May 5th in Fort Wayne with exhibits, slide shows, concessions and a sock hop.

George Miller, chairman of the Select Committee, and I have also been coordinating an effort here in Congress to promote the showing of the excellent program "One Too Many" in high schools across the nation. In northeastern Indiana, many high schools have already scheduled showings to junior and senior students. This program will be aired today over the ABC television network. In Fort Wayne, this will be followed by a special one-hour locally produced program.

During this same time period, a speakers bureau has been organized that includes broadcasting representatives, MADD (Mothers Against Drunk Drivers), the detoxification facility Washington House, the Indiana State Police, the alcohol countermeasures program of the Allen County Superior Court and Indiana Governor Orr's task force on drunk driving.

It is this type of effort that we are looking for—specific target programs that really help alter behavior on a voluntary basis and ideas that can help change attitudes. Too often we get generalizations and promises that have good intentions cost lots of money, but have unintended consequences and don't target those who they are trying to reach.

This northeastern Indiana effort demonstrates the involvement of many individuals and organizations, all working together as a community effort. I'm proud of this type of leadership in northeastern Indiana and wanted to share with you the response and support we have had for these programs.

Mr. WIRTH. Thank you, Mr. Coats.

Mr. Synar.

Mr. SYNAR. No opening statement, Mr. Chairman.

Mr. WIRTH. Mr. Bliley.

Mr. BLILEY. Thank you, Mr. Chairman.

Mr. Chairman, I hope this hearing will be helpful, but in a different way than many of my colleagues and several of the witnesses who will testify for us today.

I think this hearing will be helpful in bringing even more public attention to the very serious problem of alcohol abuse. In the past few years, with the formation of public service organizations like Mothers Against Drunk Driving—whom I applaud and thank for their efforts—the problem of alcohol abuse has been brought to the forefront of the news.

Broadcasters and the alcohol industry itself have provided hours of community service announcements to help their communities understand and attack the problems of alcohol abuse. Almost every broadcaster has aired some sort of public service announcement on this topic in the past 6 months.

I hope that this intense interest and action on the part of these industries and public interest groups will continue. I look to this hearing to keep the ball rolling, so to speak.

Beyond this, Mr. Chairman, I have serious concerns with some of the proposals which have been floated on Capitol Hill. Six months ago I was contacted by people pushing for a total ban on alcohol-related advertising on TV and radio. Now the push is on for legislation guaranteeing equal time for counter advertising.

I am concerned about these proposals not only because of the first amendment rights involved but also because I don't want to see well-intentioned public service organizations and members of this committee choose a course of public policy which may not take us to our goal.

To me, that goal is not ending consumption of alcohol altogether, but rather ending its abuse. It is the abuse of alcohol—by minors who drink at all and by adults who overindulge—which is the problem.

In many other countries, we have seen advertising limitation experiments try and fail. In fact, we have seen an experiment called prohibition try and fail in this country.

Mr. Chairman, I am very sympathetic to the wishes of many of the groups before us today. I find the incidence of alcohol abuse in this country appalling. I sorrow for the victims and families affected by alcoholism and drunk driving. I sincerely want to do something about it. That is why last month I cut a series of public service announcements against alcohol abuse that run in my own congressional district.

Alcohol abuse is a problem which knows no political division. We all oppose it. Yet, in our zeal to press an issue upon which we all so strongly agree, we should not take an expensive and hasty step which may not produce the results we desire.

I appreciate having the opportunity of this hearing and to learn more on this issue.

Thank you very much, Mr. Chairman.

Mr. Wirth. Thank you, Mr. Bliley.

Mr. Leland.

Mr. Leland. Thank you, Mr. Chairman.

Mr. Chairman, I would like to thank you and commend you for holding this very important and timely hearing.

In recent months, there have been few issues that have evoked as much debate in the broadcasting industry and here on the Hill as has the issue of beer and wine advertising. Earlier this year, it appeared that legislation would be introduced that would have banned beer and wine ads from radio and television. I understand that recently a bill requiring counter advertising has been introduced.

Mr. Chairman, there are few issues that raise as many internal conflicts as the issue of beer and wine advertising. I remain neutral on this issue because there are merits on both sides of the issue. Surely, any action that conceivably could reduce the level of alcohol abuse, alcohol dependence, and alcohol-related deaths should be given serious consideration, and yet the counter advertising proposals that I am aware of raise serious first amendment and logistical concerns.

I am sure that the panel of witnesses we have here today will discuss these issues in great detail.

Mr. Chairman, there is one other issue that I hope is discussed today also. Many ethnic minority format stations are more dependent on beer and wine product advertising dollars than their non-minority counterparts. I hope and believe that this is not because minority communities are being targeted by beverage companies but rather because other advertisers will not buy time on minority format stations.

The issue of why advertisers other than beer and wine producers do not buy ads on minority-format stations is an issue I hope the subcommittee will have an opportunity to discuss at some other time, but the level of dependence of minority-format stations on these ads raises some very serious questions for me.

For example, since beer and wine ads constitute upward of 20 percent of the ad revenue for many of these stations, they would be under a heavy counteradvertising burden. Since economic reality will dictate that a limited number of counteradvertising spots or public service announcements are run, will a requirement of counter ads spell the death of other types of PSA's?

To the extent a broadcaster is required to carry beer and wine counter advertising, will he or she reduce the number of PSA's for the American Cancer Society or the United Negro College Fund or the American Heart Association? And is alcoholism a greater problem than death from cancer or the level of education of minority youth or death from high blood pressure or cardiac disease?

Another concern I have about the high proportion of beer and wine advertising on minority-format stations is the issue of fetal alcohol syndrome and low birth weight. As you are aware, Mr. Chairman, blacks are twice as likely to give birth to a low birth weight baby, and I am very concerned about this issue, most concerned, I might add.

Mr. Chairman, there is one other point I would like to make before concluding my remarks. I have been inundated with material from broadcasters concerning their public service contributions with regard to alcohol abuse. While I have been impressed with these efforts, I hope they are not just a response to the proposed legislation, and that regardless of the outcome of legislative battle, they will be continued with the same level of quality and intensity.

Again, Mr. Chairman, thank you for calling these very, very important hearings. I look forward to the testimony of the witnesses.

Thank you, Mr. Chairman.

Mr. **Wirth**. Thank you, Mr. Leland.

Mr. Ritter.

Mr. **Ritter**. Thank you, Mr. Chairman.

I commend you for holding these important hearings.

We are all very much concerned with the relationship between advertising and consumption. That is, what has happened to consumption as advertising has increased? We are all very familiar with the sophisticated, quite remarkable ads that beer and wine have on television. What has this meant to the consumption of products?

Some of the preliminary data that we are familiar with indicate that while the advertising has increased markedly, the consumption has not. We have heard about the attempts to bar or mitigate beer and wine advertising in other countries, and the results have been mixed. I would like to hear more about that, specifically differentiating between alcohol advertising and beer and wine advertising.

The gentleman from Texas, Mr. Leland, has already talked about the other public service announcements that have become quite important on television. How does beer and wine advertising public service announcements relate to those, and is there a crowding effect at some point?

I have been very interested in judging risks and comparing risks between different foods or substances or activities or pollutants in the society, and I think we don't live in a risk-free society. Substances like coffee contain caffein, which is carcinogenic. Substances like chocolate contain caffein. They also contain other supposedly carcinogenic materials. I refer the public to the Bruce Ames Science Magazine, September 23rd review article on carcinogens in our natural foods.

Activities like driving and products like automobiles are highly dangerous things in our everyday life. We are witnessing some 50,000 and above deaths from automobiles each year. Some of those deaths, an overly large portion, are attributable to drunken driving, but then again, we are interested in the relationship between use and abuse.

What is the relationship between alcohol consumption experience and advertising and cigarette consumption experience and advertising? What are the differences between the cigarette impact on health and the alcohol impact on health overall? I think attorney Banzhaf might have some interesting data for us there.

All these discussions I view as quite positive in that by bringing the subject out into the open, generating understanding, hopefully we in this Congress and the American people can be better educated and make better decisions.

Thank you, Mr. Chairman.

Mr. Wirth. Thank you very much, Mr. Ritter.

I believe that there are no further opening statements, and I would ask our first panel to join us at the witness table, if I might.

While they are joining us, I would like to make just one brief announcement of thanks. Nancy Leach, who has been a key staff person on the subcommittee for a number of years, handling issues related to broadcasting, is leaving the subcommittee. She has been the person primarily responsible for all the logistics of this very important and large hearing, and I wanted to acknowledge for the record the great work that Nancy has done.

[Testimony resumes on p. 33.]

[The text of H.R. 2526 and H.R. 1901 follows:]

I

99TH CONGRESS
1ST SESSION

H. R. 2526

To amend the Communications Act of 1934 to require that, when any alcoholic beverage is advertised on television, radio, or cable, equivalent time shall be provided for public service announcements and programming regarding alcohol consumption and misuse.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 1985

Mr. SEIBERLING introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend the Communications Act of 1934 to require that, when any alcoholic beverage is advertised on television, radio, or cable, equivalent time shall be provided for public service announcements and programming regarding alcohol consumption and misuse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fairness in Alcohol Advertising Act of 1985".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) alcohol is a potentially dangerous and addictive drug and the misuse of alcohol is a national problem which threatens the health, safety, productivity, and quality of life of many Americans;

(2) a significant percentage of the United States population, including a high proportion of teenagers and young adults, suffers, directly and indirectly, from problems related to the consumption of alcohol;

(3) alcohol misuse is responsible for hundreds of thousands of deaths and serious injuries in this country each year;

(4) alcohol misuse costs this Nation more than $100,000,000,000 each year;

(5) excessive consumption of alcohol has been linked to child and spouse abuse, employee absenteeism, property damage, depression, birth defects, negative pregnancy outcomes, liver disease, some forms of cancer, mental retardation, heart disease, and brain damage;

(6) there is a frequent association between alcohol consumption and crime, violence, and interpersonal aggression;

(7) advertisements on radio, television, and cable promoting the consumption of alcoholic beverages associate such consumption with happiness, prestige, popu-

larity, professional success, athletic prowess, sexuality, and attainment of a rewarding, glamorous lifestyle, but such advertisements are silent as to the problems related to alcohol consumption and misuse;

(8) the public should be warned about the dangers alcohol may pose to health, safety, family life, mental acuity, and social development;

(9) while efforts to inform the public about some of the dangers associated with alcohol have increased in number and improved in quality, they are still not reaching a sufficiently wide audience and are not covering a sufficiently broad range of problems associated with alcohol;

(10) a very small fraction of the amount of money spent on radio, television, and cable advertisements for beer and wine is spent on public service announcements about the adverse effects of alcohol consumption; and

(11) teenagers and children spend an average of 3 to 4 hours every day watching television or listening to the radio and are influenced by the advertisements they see and hear.

(b) Purposes.—The purposes of this Act are—

(1) to provide an opportunity for a wider dissemination of responsible information regarding the dangers of alcohol use and misuse;

(2) to increase the public's knowledge and understanding of the many risks and consequences associated with alcohol use and misuse;

(3) to educate high-risk populations, such as pregnant women, alcoholics, children of alcoholics, and adolescents, about the special concerns and risks associated with the consumption of alcoholic beverages;

(4) to help deter individuals from engaging in excessive consumption of alcohol; and

(5) to help discourage children and teenagers from consuming alcohol and young adults from developing lifestyles which include excessive alcohol consumption.

SEC. 3. PUBLIC SERVICE OBLIGATIONS IN THE CASE OF ALCOHOL ADVERTISING ON RADIO AND TELEVISION BROADCASTS.

(a) In General.—Title III of the Communications Act of 1934 is amended by inserting after section 315 the following new section:

"CONDITION ON ALCOHOLIC BEVERAGE ADVERTISEMENTS

"Sec. 315A. (a) A radio or television licensee shall not permit any alcoholic beverage advertisement on broadcasts by such station unless equivalent broadcasting time is made available for use under subsection (b).

"(b) Under guidelines which the Commission shall prescribe by regulation, a licensee shall ensure that the advertising time provided under subsection (a) be afforded for the broadcasting by responsible spokespersons of messages or other programming regarding the various adverse effects on individuals, and the public generally, that may be attributable to alcoholic beverage consumption and misuse.

"(c) Messages and other programming made available for use under subsection (b) shall not be taken into account in determining the extent to which any broadcast station is operating in the public interest, convenience, and necessity.

"(d) As used in this section:

"(1) The term 'alcoholic beverage advertisement' means any message or other programming—

"(A) which is intended to promote the purchase or consumption of any alcoholic beverage, and

"(B) for which any money, service, or other valuable consideration (as defined in section 317(a)(1)) is directly or indirectly paid, or promised to or charged by, the broadcast station licensee or any broadcast network of which such station is an affiliate.

Such term shall not be construed to include any message limited to the identification of the sponsor of any program by the use of any business or institutional logogram (as defined in section 399A).

"(2) The term 'alcoholic beverage' has the same meaning as given such term in section 158(c) of title 23, United States Code.

"(3) The term 'equivalent broadcasting time', when used in reference to any alcoholic beverage advertisement broadcast on a station, means broadcast time on such station—

"(A) which is of equal duration to that used for broadcasting the alcoholic beverage advertisement, and

"(B) which is at a time and has an audience size and composition approximately equivalent to that used for broadcasting such advertisement.".

SEC. 4. PUBLIC SERVICE OBLIGATIONS IN THE CASE OF ALCOHOL ADVERTISING ON CABLE TELEVISION.

(a) In General.—Title VI of the Communications Act of 1934 is amended by inserting after section 639 the following new section:

"ALCOHOLIC BEVERAGE ADVERTISEMENTS

"Sec. 640. (a) With respect to programming carried by a cable system, the cable operator shall not permit any alcoholic beverage advertisement on such programming unless equivalent programming time is made available for use under subsection (b). Subject to section 612(i), the preceding sentence shall not apply with respect to programming of a broadcast station which is carried by such system or other programming over which the cable operator may not, by law, exercise editorial control.

"(b) Under guidelines which the Commission shall prescribe by regulation, a cable operator shall ensure that the programming time provided under subsection (a) be afforded for the presentation by responsible spokespersons of messages or other programming regarding the various adverse effects on individuals, and the public generally, that may be attributable to alcoholic beverage consumption and misuse.

"(c) As used in this section:

"(1) The term 'alcoholic beverage advertisement' means any message or other programming—

"(A) which is intended to promote the purchase or consumption of any alcoholic beverage, and

"(B) for which any money, service, or other valuable consideration (as defined in section 317(a)(1)) is directly or indirectly paid, or promised to or charged by, the cable operator or any person providing the video programming to such operator.

Such term shall not be construed to include any message limited to the identification of the sponsor of any program by the use of any business or institutional logogram (as defined in section 399A).

"(2) The term 'alcoholic beverage' has the same meaning as given such term in section 158(c) of title 23, United States Code.

"(3) The term 'equivalent time', when used in reference to any alcoholic beverage advertisement carried on a cable system, means programming time on such system—

"(A) which is of equal duration to that used for transmitting the alcoholic beverage advertisement, and

"(B) which is at a time and on a channel that has an audience size and composition approximately equivalent to that used for transmitting such advertisement.".

SEC. 5. TECHNICAL AND CONFORMING AMENDMENT.

(a) ENFORCEMENT AUTHORITY TO INCLUDE REVOCATION.—Section 312(a) of the Communications Act of 1934 (47 U.S.C. 312(a)) is amended by striking out "or" at the end of paragraph (6), by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; or", and by adding at the end thereof the following:

"(8) for willful or repeated failure to comply with the requirements of section 315A.".

(b) LEASED ACCESS CABLECASTERS.—Section 612 of such Act (47 U.S.C. 532) is amended by adding at the end thereof the following:

"(i) Any person using channel capacity under this section shall be subject to the requirements of section 640 of this Act relating to alcoholic beverage advertisements to the same extent and in the same manner as such requirements apply to cable operators.".

SEC. 6. EFFECTIVE DATE; REGULATIONS.

(a) IN GENERAL.—The amendments made by sections 3, 4, and 5 shall apply to alcoholic beverage advertising carried on or after the 180th day after the date of the enactment of this Act.

(b) COMMISSION REGULATIONS.—The Federal Communications Commission shall initially promulgate regulations under sections 315A and 640 of the Communications Act of 1934, as added by sections 3 and 4 of this Act, not later than 120 days after the date of the enactment of this Act.

(c) CONSULTATION WITH OTHER FEDERAL AGENCIES.—In prescribing such regulations, the Federal Communications Commission shall consult with—

(1) the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury; and

(2) the Public Health Service.

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99TH CONGRESS
1ST SESSION

H. R. 1901

To provide for a study regarding the radio and television advertising and promotion of alcoholic beverages as well as other media, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 1985

Mr. NIELSON of Utah introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To provide for a study regarding the radio and television advertising and promotion of alcoholic beverages as well as other media, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Alcoholic Beverage Broadcast Advertising Study Act".

SEC. 2. STUDY.

(a) IN GENERAL.—The Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury shall conduct a study regarding the advertising and promotion of alcoholic beverages by radio and television broadcast stations and other media.

(b) SPECIFIC OBJECTIVES OF STUDY.—Such study shall—

(1) examine the extent to which such advertising encourages consumption of alcohol, particularly by the youth and by problem drinkers;

(2) examine other promotional practices which encourages consumption of alcohol (whether or not conducted in connection with such advertising);

(3) examine the extent to which such advertising and other promotional practices are subject to private industry self regulation, and if so, the effectiveness of such regulation; and

(4) examine the extent to which other forms of public information may neutralize or reduce any adverse effects of such advertising and promotion.

SEC. 3. REPORT.

(a) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Bureau of Alcohol, Tobacco and Firearms shall complete the study under section 2 and prepare and transmit to the Congress a report on such study, together with any recommendations for legislation or administrative action.

(b) FCC FINDINGS.—With the report under subsection (a), the Bureau shall submit findings and determinations which the Federal Communications Commission shall make regarding advertising practices relating to promotion of alcoholic beverages by persons holding broadcast licenses granted by the Commission.

(c) OTHER AGENCY FINDINGS.—With the report under subsection (a), the Bureau shall submit findings and determinations made by the Surgeon General of the Public Health Service, as well as those made by other Federal agencies, regarding the harmful effects that consumption of alcoholic beverages may have on health.

SEC. 4. PUBLIC COMMENT.

In conducting such study and in the preparation of such report, the Bureau of Alcohol, Tobacco and Firearms shall provide an opportunity for public comment.

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Mr. WIRTH. Our witnesses today are Mr. Michael Jacobson, from the Center for Science in the Public Interest, in Washington; Mr. Edward Fritts, president, National Association of Broadcasters; Mr. Dudley Taft, president of Taft Broadcasting in Cincinnati, representing the Television operators caucus; Professor John Banzhaf, George Washington University Law School, in Washington; Dr. Lloyd Johnston, Survey Research Center at the University of Michigan; Mr. John DeLuca, president of the Wine Institute in San Francisco; Mr. Barry Lynn, American Civil Liberties Union; and Mr. Donald Shea, president of the United States Brewers Association.

Perhaps we could start in just that order of witnesses and begin with Mr. Jacobson.

Mr. Jacobson, based upon the number of petitions in front of us, I can see that you have been a very busy individual. We thank you very much for joining us.

I think all the witnesses are familiar with the rules of the subcommittee in which we would ask you to summarize your testimony in 5 minutes or less. We will include your statements in full in the record. After your opening statements, we will then go to the panel for questions.

As you can see, we have a very long morning and early afternoon ahead of us, so your efforts in helping us to expedite the proceedings would be greatly appreciated.

We have a timer which will make the appropriate sound if the high technology of an egg timer works. Why don't we begin with you, Mr. Jacobson.

Thank you all for being with us.

STATEMENTS OF MICHAEL F. JACOBSON, EXECUTIVE DIRECTOR, CENTER FOR SCIENCE IN THE PUBLIC INTEREST; EDWARD O. FRITTS, PRESIDENT, NATIONAL ASSOCIATION OF BROADCASTERS; DUDLEY S. TAFT, ON BEHALF OF TELEVISION OPERATORS CAUCUS, INC.; JOHN F. BANZHAF III, WASHINGTON, DC; LLOYD D. JOHNSTON, ANN ARBOR, MI; JOHN A. DeLUCA, PRESIDENT, WINE INSTITUTE; BARRY W. LYNN, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION; AND DONALD B. SHEA, PRESIDENT, UNITED STATES BREWERS ASSOCIATION, INC., ACCOMPANIED BY STEPHEN K. LAMBRIGHT, VICE PRESIDENT AND GROUP EXECUTIVE, ANHEUSER-BUSCH COS., INC., AND JAMES L. TITO, EXECUTIVE VICE PRESIDENT, LATROBE BREWING CO.

Mr. JACOBSON. Thank you very much, Mr. Chairman and members of this committee.

I am Michael Jacobson, executive director of the Center for Science in the Public Interest. My organization has been coordinating Project SMART, a nonpartisan effort to reform alcohol advertising in this country.

Project SMART is supported by hundreds of groups, ranging from the National PTA to Remove Intoxicated Drivers, from the National Council on Alcoholism to the United Methodist Church.

Americans are outraged that they and their children are subjected to a massive advertising campaign that glamorizes alcohol. They want an end to this fictional depiction of a potentially addictive hard drug. Some 1 million Americans have signed Project SMART's petition that calls for either equal time for health and safety messages about alcohol or an end to the alcohol commercials on radio and television.

In addition to the 1 million signatures, Lou Harris conducted a poll several months ago and found that 57 percent of the public supports a total ban on beer and wine commercials. What is the purpose of the ads? Listening to the industry, you would think that the only purpose was to switch people from one brand to another. God forbid that a 14 year old should see an ad on music television.

The evidence says otherwise. The ads tend to maximize consumption. They also educate a new generation to believe that drinking is directly associated with fun, success, sex and all the good things in life.

What do some independent experts say about the alcohol advertising? Professor Mark Albion of the Harvard Business School says:

> It's ludicrous to think that companies are only going after current users. What they are looking for is new users to bring into the market.

Les Brown, former media critic for the New York Times, said:

> You have to be some kind of simp to believe that large corporations aren't trying to sell a whole new generation on the pleasures of drink.

Today you are going to hear very different views on the intentions and the impact of alcohol advertising, but one thing on which I think everybody will agree is the need for massive educational efforts to change America's drinking habits.

I would like to show a brief tape indicating some of the major educational efforts on the public airwaves.

[Video presentation.]

At this point in his testimony, Dr. Jacobson presented videotaped samples of typical alcoholic beverage commercials which are transcribed below.

COORS LIGHT

STORYLINE	TEXT
Young man photographing attractive female model with classic automobile in background.	(MUSIC) When I finish work, I can't wait to see what develops...
Fairground. Rapid shots of couple laughing on roller coaster, followed by shot of can of beer being openned.	...Turn it loose, turn it loose, turn it loose tonight ...Coors light.
Couple mingling with friends at fairground, followed by another shot of a can of beer.	Beer after beer when you're moving around... Coors light.
Couple sits down at table, and waitress brings them a pitcher of beer. Someone hands a bottle of Coors across foreground.	... Is the one that won't slow you down... ...Coors light.
Juggler tosses balls to man who juggles them while girlfriend looks on.	
Tray carrying six or seven bottles of beer passes across foreground. Man stops juggling to grab a bottle.	Turn it loose...
Neon "Turn it loose" appears in corner of screen.	

BUDWEISER LIGHT

STORYLINE	TEXT
Horse running through snow. "Budweiser Light" transposed across screen.	Budweiser Light
Basketball game. Player shoots a basket and misses.	(MUSIC) Bring out your best!
Player shoots a basket. Close-up of words "Budweiser Light".	Bring out your best!
Coach sitting in audience.	Budweiser Light...
Player attempts another basket and makes it. Close-up shot of can of Budweiser Light.	Bring out your best!

RICHARDS WILD IRISH ROSE WINE

STORYLINE	TEXT
Michael Jackson look-alike and other young people break-dancing.	(MUSIC)
Close-up of glass being filled with ice.	
Close-up of bottle of Richards Wild Irish Rose Wine.	
Dancers pushing a cocktail cart which is carrying glasses and a bottle of wine.	Wild about the Rose...
Close-up of glass of ice being filled with the wine product.	
Dancers jumping and dancing in unison.	Wild Irish Rose...
Michael Jackson look-alike leaves group, grabs the cocktail cart, and pushes it to the center of the group.	
Close-up of bottle of Wild Irish Rose Wine.	...Wine.

SCHLITZ MALT LIQUOR

STORYLINE	TEXT
Close-up of can of malt liquor sitting beside full pitcher.	(MUSIC)
S.O.S. and Chi-Lites bands facing camera, dancing, holding cans of malt liquor.	Our bodies' goin' strong... So don't say beer - say bull.
Bull crashing through wall.	SCREAMS. SOUND OF WALL BREAKING UP.
Dancers disperse. One jumps up and dangles from a branch.	
Bull crashing through wall. "No one does it like the bull," printed across bottom of screen.	No one does it like the bull!

HARVEY'S BRISTOL CREAM

STORYLINE	TEXT
Distinguished-looking, grey-haired British gentleman walking towards camera, away from fancy house, holding small glass (empty).	For years, the English have been telling you that Harvey's can only be sipped after dinner in these silly little glasses.
Man holds glass up to camera, raises eyebrows with much disdain, and turns toward the house.	
Man approaches front door of house.	Look here, and I shall expose the truth...
Man peers through key-hole, to observe party within.	
People mingling at a cocktail party. Tray of drinks passes across foreground. Woman approaches a man and smilingly offers him a box of Harvey's Bristol Cream.	This is an English Christmas party. These people find Harvey's delicious...
Close-up of Harvey's bottle beside large glass being filled from off-screen.	...straight up over ice, or with a wedge of lime.
Tray holding bottle, box, and small,full glass of Harvey's.	
Hand reaches in and replaces small glass with larger one (also full).	The taste you don't have to sip to enjoy.

Mr. Jacobson. That is only a small sample of the $900 million per year worth of wine and beer advertising on radio and television. To be sure, as we have seen earlier, broadcasters and brewers to some extent have recently begun sponsoring public service announcements in some programs. In fact, maybe it is just a coincidence that ABC has a show tonight on drunk driving.

But these voluntary efforts suffer from serious limitations. First, the public service announcements deal almost exclusively with drunk driving. Alcohol problems cover a much greater range, including cancer of the mouth and throat, birth defects, spouse abuse, and for some people, like children, recovering alcoholics, some children of alcoholics, people who shouldn't drink at all.

Furthermore, the PSA's are likely to last only as long as the citizen protests and the threat of legislation. For an indication of broadcasters' true commitment to responsibility, look at antismoking spots. The minute broadcasters were no longer required to run such spots, they stopped.

Congressman Seiberling's legislation would solve these problems by ensuring that the public service announcements cover a wide range of topics, not replace other public service announcements, and become a permanent fixture in the electronic landscape. We support this legislation. Millions of your constituents support this legislation, and we hope members of this committee do also.

Thank you very much.

[Testimony resumes on p. 196.]

[The prepared statement, supplementary testimony and articles of Mr. Jacobson follow:]

Michael F. Jacobson, Ph.D.
Executive Director
Center for Science in the Public Interest

Mr. Chairman, and members of the Committee. Thank you for the opportunity to testify before you this morning. I commend you for conducting this inquiry into the need for establishing a balance of health and safety messages to counteract the badly distorted view of drinking that is promoted by the massive amounts of broadcast alcohol advertising.

My name is Michael Jacobson. I am executive director of the Center for Science in the Public Interest (CSPI), a non-profit health advocacy organization that has taken the lead in numerous prevention policy initiatives to help reduce the enormous burden of alcohol problems on society. Since June 1984, CSPI has coordinated **PROJECT SMART**, a national petition drive seeking either equal time for health and safety messages about alcohol or an end to broadcast alcohol ads. Among the hundreds of groups that support PROJECT SMART are the National PTA, National Council on Alcoholism, Remove Intoxicated Drivers, National P.R.I.D.E., and several major religious denominations.

PROJECT SMART's original and ongoing objective has been to balance the decidedly biased commercial portrayal of alcohol use that is conveyed daily to millions, including young children and adolescents. This message of alcohol glamorization is carried most dramatically on the powerful, publicly regulated broadcast media.

Our efforts to reduce the pressures on young people to drink did not begin with appeals to lawmakers for legislation. On the contrary, those in the PROJECT SMART campaign and others appealed in 1982 to the alcoholic beverage producers, directly, for voluntary restraints on the promotion of their products to young people and heavy drinkers, the two most vulnerable groups of consumers. Industry's answer was no response at all.

A year later, we formally petitioned the Federal Trade Commission for similar relief. The Commission, despite a finding that industry practices target young people, as well as an acknowledgment of the near impossibility of developing conclusive evidence demonstrating a causal connection between alcohol advertising and alcohol abuse, chose to do nothing. Instead, the Commission passed the buck to Congress, and principally, to this Subcommittee.

Today, we present to this Subcommittee signatures from some 1 million citizens concerned about broadcast alcohol ads. A Louis Harris/Business Week poll conducted last February confirms strong support for reforms of television advertising for alcoholic beverages, finding 57 percent of Americans in favor of a ban on such ads. We believe that an even greater majority supports an "equal time" requirement, such as the one proposed by Ohio Representative John Seiberling, whose vision and courage we heartily salute.

BEST COPY AVAILABLE

Over a quarter-of-a-century ago Mr. Harold E. Fellows, then president of the National Association of Radio and Television Broadcasters, appeared before the Senate Committee on Interstate and Foreign Commerçe and noted that liquor advertising was voluntarily prohibited by broadcasters because of widespread public opposition to it. Significantly, his testimony suggested that if there were a "substantial" public expression of disapproval of beer and wine advertising, broadcasters would take similar action to regulate or ban such commercials.(1) Today, when one million Americans have formally registered their dissatisfaction with beer and wine ads, broadcasters conveniently ignore public opinion.

This Committee is understandably concerned that any action it takes relating to alcohol ads be supported by some evidence that demonstrates a need for that action. Put another way, does $920 million of broadcast advertising annually for alcoholic beverage products promote or glamorize drinking in a way that contributes to alcohol problems?(2) Some things speak for themselves. Take a look at a few typical ads -- alcohol is associated with all the good things in life: sex, friendship, patriotism, health and fitness, success in sports, and a comfortable lifestyle. Though brand identification may be an important component of an advertising strategy, these ads, particularly when viewed in composite, are really selling something quite different: a lifestyle that includes drinking as an essential component.

Only the very naive, as former New Jersey Congressman Charles Wolverton [Chairman of the Interstate and Foreign Commerce Committee] stated in 1954, would believe assertions that the alcohol industry avoids attracting new users or encouraging greater consumption of its products.(3) As Les Brown, former N.Y. Times media critic, recently put it more piquantly:

> You have to be some kind of simp to believe that large corporations, spending millions of dollars through agencies that are masters of persuasion, aren't trying to sell a whole new generation on the pleasures of drink.(4)

Let's face it: all these companies are competing for a slice of the pie, and so much the better if the pie is a bigger one. It is hardly a secret that beer and wine companies compete not only among themselves, but also within a larger beverage market. Marketing strategies for a variety of new products, among them wine coolers, light wines and light beers, and creamy liqueurs, obviously aim at non-drinkers and light drinkers as a means of boosting consumption. And boosting consumption means higher levels of societal alcohol problems.

The alcoholic beverage industry and its allies assert that there is no proof that broadcast alcohol advertising is linked to

BEST COPY AVAILABLE

drinking and alcohol problems, and for that reason, no reforms are necessary. While conclusive evidence may be extremely difficult, if not impossible, to ascertain, there are sufficient grounds upon which Congress could act to lessen the seduction of young people into a drinking lifestyle.

If there are any doubts about the effectiveness of broadcast advertising, just look at changes in the retail alcoholic beverage market since beer and wine -- but not spirits -- started advertising heavily on radio and television. Beer and wine sales and per capita consumption have been steadily up.(5) Liquor, which just fifteen years ago measured half of all alcohol sales, accounts for only one-third today.(6) Since, 1971, per capita sales of beer rose 22 percent and wine rose 13 percent.(7) By stark contrast, sales of spirits have dropped 10 percent. Naturally, this trend away from spirits has been buttressed by other factors, but it is, as liquor companies know well, illustrative of the significant power of broadcast advertising.

In 1976 congressional testimony, Mr. Fred Klein, the vice president of a Chicago advertising agency, concurred with Senator William Hathaway's point that alcohol advertisers employ "all of the techniques that [they] can possibly use in advertising ... to sell as much booze as they can to whatever group they can sell to."(8) The object of advertising is to sell more products, and media expenditures by advertisers indicate that the airwaves are the place to do it. Seagram's current efforts to air pro-liquor messages attests to the commercial importance of the broadcast medium in an effective marketing strategy.

It may be true that young people and non-drinkers are not always the intended targets of the ads. But it is also undeniable that they, by the millions, are incidentally reached, and that, along with the adults, they too are "educated" about drinking.

Over three million young people in this country are alcoholics or problem drinkers. Nearly 40 percent of high school seniors are binge drinkers, consuming five or more drinks at a time, at least once in the two weeks preceding the annual NIDA High School Drug survey.(9) Children as young as the fourth grade are beginning serious experimentation with alcohol, as well as with other drugs.(10)

Do youngsters need or benefit from the incessant ads that glamorize drinking as an essential young adult behavior? Do members of this Committee believe that broadcasters' response to massive alcohol problems -- airing messages about drunk driving, and an occasional dramatic scene about alcoholism -- is a satisfactory one? Do those messages reach ten and twelve year olds who are just becoming hooked on alcohol? Do they reach toddlers who are saturated with images connecting alcohol with good times and fun?

There is ample evidence linking alcohol to massive societal harm. If Congress perceives that any relationship exists between the commercial promotion of alcoholic beverages and societal injury, then, without question, it can and should act to protect the public health and safety.

Voluntary broadcast and alcohol industry codes have been largely ineffective in keeping ads from appealing to youth or from suggesting inappropriate drinking habits. The hypocrisy of these self-serving standards is clearly revealed by the censorship of distilled spirits, but acceptance of beer and wine ads. Mr. Stockton Helffrich, former president of the National Association of Broadcasters Code Authority, in 1976 told Congress that this difference in alcohol advertising standards was simply the product of "an arbitrary decision."(11) Beer, not liquor, is the overwhelming beverage of choice among teenagers and the alcoholic beverage most associated with teenage accidental death. Incredibly, nothing more than an "arbitrary decision" has enabled broadcasters to reap multi-million dollar annual profits from advertising that mis-educates our nation about alcohol.

If industry believes its own arguments that broadcast ads have no effect on consumption or abuse, why not open the airwaves to liquor as well and increase revenues in the process? Justification for industry's queer standards can be found only in the pecuniary fiction that wine and beer are beverages of "moderation."

Broadcasters have a critical role to play in educating people about alcohol. In small part, they are meeting their public responsibilities. Especially in the weeks surrounding congressional inquiries, the American public has been treated to a number of anti-drunk driving messages, as well as a few dramatic programs and news specials highlighting alcohol problems. Indeed, the number of these messages has increased as pressure from Project SMART has grown, and as Congressional concern about broadcast advertising issue has mounted. (It is no mere coincidence that ABC has chosen tonight to air its special show, "One Too Many," a drama about teenage drinking and driving.) Broadcasters and brewers have refined the art of positioning themselves as "part of the solution, not part of the problem."

Despite their transparently self-serving motivation, we applaud broadcasters on the issue of drunk-driving. Ironically, their massive response demonstrates that providing "equal time" seems hardly a problem at all. If broadcasters can so gladly provide time for drunk-driving PSAs, why can't they do the same for PSAs about the risks of alcohol associated with spousal and child abuse, drownings, drinking during pregnancy, cancer, and heart disease, or about the appropriateness of abstinence for teens, children of alcoholics, and anyone else who chooses not to drink?

If their concern about America's alcohol problems is indeed genuine, why then do they continue to focus on only one aspect of the alcohol problem?

When public pressure and threats of legislation wane, how long can we expect to see even the drunk-driving PSAs? History is instructive on this matter. Despite the absolute harmfulness (disputed only by the tobacco industry) of cigarette smoking (which the broadcasters now argue distinguishes cigarettes from alcoholic beverages), it took court action and Federal Communications Commission rulemaking before broadcasters could be forced to provide free air time to answer ads that promoted a death and illness-producing practice. And, lest we forget, once the cigarette ads were withdrawn from the airwaves, the pro-health, anti-smoking messages all but disappeared.

Unless Congress acts, most alcohol and health public service announcements, including anti-drunk driving messages -- which are often relatively low-budget affairs hardly in a league with slick alcohol ads -- will disappear. Or they will be relegated principally to the wee hours of the morning. More significantly, broadcast PSAs will continue to ignore the great diversity of problems related to alcohol. Persons at high risk, like the 28 million children of alcoholics, the millions of pregnant women, adolescents and alcoholics, will still get only one main message: that everyone drinks and that drinking is OK for everyone.

Plainly, the public's broadcast education about alcohol should not be left solely to those who have a vested interest in selling alcohol. The consequences and risks of alcohol use and misuse (particularly those concerning high risk persons and situations) must be an integral part of that education. Vague moderation messages that promote "responsible" drinking or advise "knowing when to say when" are short on facts and long on self-serving, subtle justifications for drinking. One public health scholar commented,

> Even the "moderation" messages of the alcoholic beverage industry play a normalizing function. Virtually all start from and reinforce the assumption that some drinking is always acceptable. The industry theme in the area of drunk-driving is "Know Your Limits"--which sanctions some drinking and driving.(12)

We believe that only by requiring broadcasters to provide equal time for information about the risks and consequences of drinking will adults and youths alike be able to make informed decisions about whether and how much and when to drink. Young people need information, but more importantly, they need media role models (as well as parents and others) who will promote avoidance of alcohol for them. Persons of legal drinking age need regular media support to avoid drinking and driving. Other young people need help to resist numerous pressures, including commercial ones, to drink. Broadcasters have the power to teach them how to "just say no." In today's media environment, little if any such support is there.

Much has been said of the potential economic devastation of the broadcast industry if it is required to provide air time for information about the risks and consequences of alcohol use. Such claims are greatly exaggerated. First, we are not talking, for the most part, about marginally successful businesses. As a profit-maker, broadcasting is a highly lucrative industry. Second, revenues for radio and television have been growing by leaps and bounds, up 17.8 percent for TV and 13.6 percent for radio in 1984.(13) No denying it, broadcasters have been granted by the public what amounts to a monopoly over a particular frequency. Demand for access to that medium is strong, and given the media's ability to reach the consuming public with powerful and persuasive messages, it is likely that at least some of the costs involved could be spread to all advertisers.

In 1984, only 3 to 4 percent of all TV and radio revenues derived from alcohol advertising.(14) Surely, if society expects lawyers to provide pro bono legal services, and hospitals to provide some level of free care for the indigent, then it can hardly be unjust to ask federally licensed broadcasters to do their share too, in the public interest. This is particularly apt when they profit to the tune of millions of dollars from the promotion of alcoholic beverage drugs that impose such weighty economic, social and physical costs on society.

Perhaps alcohol producers that use the airwaves might be assessed by the broadcasters to share the cost of providing "equal time." Companies would no doubt want to keep their messages on the air, rather than leave that powerful medium for competitors to exploit.

It is apparent that if broadcast companies have airtime continually to promote their own varieties of entertainment, and run self-serving statements congratulating themselves on their public service activities (as ABC has done on several occasions during the last few weeks), then they should be able, without economic hardship, to air a more balanced view of drinking.

Congressman John Seiberling's "Fairness in Alcohol Advertising Act of 1985" provides an excellent vehicle to achieve such a balance. Alcohol historically has been specially regulated due to its special product characteristics: it is in fact a toxic, potentially addictive drug product. Its use and misuse afflict millions of individuals and families directly, and all of society indirectly. Its unique and controversial nature is apparent: earlier in this century, the sale, distribution and manufacture of alcoholic beverages was prohibited. Society's misuse of this product results in over 100,000 deaths and $120 billion in economic losses (15) in this country each year.

But, broadcast ads for alcohol portray a very limited and sanitized version of alcohol use. The public importance of expanding this abbreviated lesson about alcohol is undeniable, and utilization of a "fairness doctrine" approach is warranted to insure a comprehensive airing of pressing public health and safety issues surrounding alcohol use.

In addition, regulatory measures must also be implemented to further deglamorize alcohol use, particularly for young people. To that end, we call upon this committee to develop and pass legislation that would:

1. bar the use of athletes and celebrities in ads;
2. eliminate ads that connect drinking with sports or with other activities requiring a high degree of alertness;
3. eliminate advertising appeals that suggest heavy drinking or excessively rapid consumption; and
4. restrict the use of "lifestyle" ads that associate desirable social, sexual, athletic, or economic outcomes with the use of an alcoholic beverage.

In summary, this Subcommittee has sufficient evidence before it today to act to reduce the commercial seduction of young people into a drinking lifestyle. This Subcommittee has the power to save lives by assuring that Americans are better informed about the role and consequences of alcohol use. And Members of this Subcommittee have the support of their constituents, at least those outside of the alcoholic beverage and broadcasting industries, to attack our most pervasive and costly drug problem. We urge this Subcommittee to proceed without delay to endorse the "Fairness in Alcohol Advertising Act of 1985," as well as our other recommendations.

Thank you for this opportunity to present our views.

FOOTNOTES

1. Testimony of Harold E. Fellows, Senate Committee on Interstate and Foreign Commerce, Jan. 30-31, Feb. 6-7, 1952, pp. 237-8.

2. "U.S. Alcohol Abuse, Ads Not Linked," *Advertising Age,* Feb. 11, 1985, p. 70.

3. Hearing, House Committee on Interstate and Foreign Commerce, May 19, 20, 21, 24, 1954; p. 422.

4. Les Brown, "If Beer Commercials Are Banned," *Channels*, p. 20 (March/April, 1985).

5. *Alcohol and Health*, Fifth Special Report to Congress, Nat. Inst. on Alcohol Abuse and Alcoholism, p. 1 (1983).

6. Distilled Spirits Council of the United States, *Annual Statistical Review, 1982-83,* Table 48, page 52.

7. See note 5, *supra*.

8. Statement of Fred Klein, Grey-North, Inc.; Hearing, Senate Committee on Labor and Welfare, March 8 and 11, 1976; p. 159.

9. *Drugs and American High School Students, 1975-83*, U.S. Public Health Service, National Institute on Drug Abuse, 1984.

10. *Weekly Reader* survey, released April 25, 1985, Xerox Educational Publications.

11. Statement by Stockton Helffrich; Hearing, Senate Committee on Labor and Welfare, March 8 and 11, 1976; p. 27.

12. [Wallack, Lawrence, "Drinking and Driving: Toward a Broader Understanding of the Role of the Mass Media," Journal of Public Health Policy, December 1984)

Supplementary Testimony

Michael F. Jacobson, Ph.D.

Executive Director

Center for Science in the Public Interest

I. INTRODUCTION

We applaud Representative Wirth and the Subcommittee for holding this inquiry into alcohol advertising, and for opening the examination into the need to insure a balance of information on radio and television about America's most popular and most devastating hard drug, alcohol.

I am the executive director of the Center for Science in the Public Interest, a non-profit organization that is supported largely by our 35,000 individual members living in every state of the union. Since 1971, CSPI has focused its energies on informing the public about and solving important health and environmental problems. Much of our work has been devoted to improving America's nutrition policies in order to reduce the incidence of heart disease, stroke, cancer, and other diet-related diseases. Our project on alcohol policies commenced several years ago when we recognized how a significant portion of the diet -- that consisting of alcohol -- relates to health and social problems that dwarf practically all others.

Traditionally, efforts to combat alcohol problems have focused on treatment of alcoholics, an undeniably important activity. In the past several years, though, many health experts have urged that more attention be devoted to preventing alcohol abuse and alcoholism.(1)

Today's subject of the broadcast advertising of alcoholic beverages must be placed within the overall context of alcohol problems in our society. According to government estimates, each year alcohol contributes to between 100,000 and 200,000 deaths(2) and results in economic costs of some $120 billion.(3) Alcohol, as many know, is related to about half of all highway deaths. Much less well-known is that half or more of all drownings, cases of spouse and child abuse, homicides, and rapes are also related to alcohol.(4) Alcohol affects practically every organ in the body, and inappropriate use can cause brain damage, birth defects, liver cirrhosis, and several gruesome forms of cancer (mouth, throat, larynx, and esophagus). Alcohol, much more so than cigarette smoking (the other major potentially deadly habit promoted by advertising), ruins millions of families and careers, undermines the educational experience of our young, and severely hampers productivity in the workplace.

Implementing a national program to minimize alcohol problems is something that policy-makers are just beginning to address. A comprehensive program would consist of massive educational efforts (in part utilizing the broadcast media), improved product labeling (ingredients, warning notices, and calorie declarations), effective drinking-driving measures (including automatic seatbelts, airbags, license revocations, and alcoholism treatment referrals), increased

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excise taxes (partially earmarked for alcohol programs), and reforms of alcohol marketing. Meanwhile, identification and treatment of alcoholics should also continue unabated. Each part of such a program would have a modest effect by itself, but the several facets implemented together would interact synergistically to yield a dramatic reduction in alcohol problems in the coming decade.

The importance of this multi-faceted approach to alcohol problems may be best appreciated by foes of drunk driving. Even with massive public support, roadblocks, stiffer penalties, and numerous broadcast public service announcements, the proportion of alcohol-related traffic fatalities (according to the National Highway Traffic Safety Administration) has declined almost imperceptibly in the past four years.(5) This dismal progress suggests strongly that as long as millions of Americans continue to drink to excess, all too many of them will also drive an automobile while intoxicated. The real solution lies in modifying -- and moderating -- the role of alcohol in our society.

II. HISTORY OF EFFORTS TO REFORM ALCOHOL ADVERTISING

As members of this Committee probably know, companies promote the sale of alcohol in practically every way imaginable, ranging from "spring break" parties on the coasts of Florida and Texas to student marketing representatives on college campuses to persuasive television commercials. Television and radio advertising is one of the most important, and effective, components of the beer and wine industries' promotional efforts. Out of advertising budgets for all alcoholic beverages that total over $1.2 billion annually, brewers and vintners alone devote over $900 million to broadcast advertising. This represents an increase in radio ad expenditures of 407 percent and television ad expenditures of 660 percent between 1970 and 1984(6), far in excess of the 167 percent increase in the consumer price index during that period.(7)

While broadcasters, particularly in recent months, have aired a flurry of public service announcements concerning drunk driving (and rarely other alcohol-related problems), the quantity, quality, and timing of the alcohol ads altogether overwhelm the public service announcements. (We note that the National Radio Broadcasters Association claims that radio stations sponsored $127 million of alcohol-related PSAs, programming, and promotional activities last year, only slightly less than their estimated revenue from beer and wine ads. [NRBA Alcohol-Related Public Service Survey' January 1985]) While well-intentioned, the NRBA's survey methods are so flawed that the results are highly questionable [only 20 percent response from stations; self-selected responders; no means of vertification; among other problems], yet even this survey acknowledges that stations participating in the survey broadcast an average of only about two alcohol-related PSAs a day. Also, what a contrast there is between a boring five-in-the-morning talk show and slick, musical spots that pound away in prime time. It is somewhat ironic, if radio and some television stations really do give almost equal time to drinking driving messages, that they would contest legislation that would insure their interest in PSAs is not temporary and more comprehensive.

Our efforts to reform alcohol marketing practices began over three years ago, in March, 1982, when Center for Science in the Public Interest (CSPI) and 19 other citizens groups wrote to all major domestic brewers, vintners, and distillers, urging voluntary restraints in marketing activities, particularly those aimed at youngsters and heavy drinkers. (See attached letter, Exhibit I.) Not one single company responded. One trade association, however, to which no letter was even addressed, responded with a summary rejection.

In light of the alcohol producers' failure to regulate themselves or to respond to expressions of concern from citizens groups, in November, 1983, CSPI and two dozen other groups petitioned the Federal Trade Commission to open a broad investigation of the marketing of alcoholic beverages. (See attached summary of actions requested in CSPI's petition, Exhibit II.) The petition called for a ban on all marketing efforts aimed at youths and heavy drinkers, the two most vulnerable audiences. Among other actions, it also asked for warning notices within print ads and equal time for health messages concerning alcohol to balance alcohol ads. Not surprisingly, the FTC last month denied the petition, primarily basing its decision on the absence of conclusive, quantitative proof of a cause and effect relationship between advertising and abuse.

III. BROADCAST ADVERTISING FOR ALCOHOL AND PROJECT SMART

Inasmuch as the FTC or other federal agencies are unlikely to undertake major reforms without clear signals from Congress, CSPI and other groups saw the need to demonstrate the public's concern about alcohol ads to the President and Congress. Last June, two dozen national organizations announced Project SMART (SMART stands for Stop Marketing Alcohol on Radio and Television), a national petition campaign calling for either an end to broadcast beer and wine commercials or equal time for health messages about alcohol.

Since its announcement, Project SMART has gained the endorsement or support of hundreds of national, state, and local groups, ranging from the Colorado Parent Teachers Association to the Virginia Association of School Psychologists, from Remove Intoxicated Drivers (RID) to Parents' Resource Institute for Drug Education (P.R.I.D.E.) The PROJECT SMART petition has already been signed by almost one million people, a level of support that we believe will demonstrate conclusively that a broad cross-section of Americans is fed up with the drumbeat of alcohol ads.

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The current depth of the public's concern was recently reflected in a national poll by Louis Harris and Business Week magazine which found that 57 percent of Americans favor a ban on alcohol ads on radio and TV.(8) Unfortunately, the survey did not ask about equal time for health messages, PROJECT SMART's alternative corrective remedy that we think would be supported by an overwhelming majority.

Although we are concerned about all forms of alcohol marketing, we are particularly troubled by broadcast advertising. Broadcast ads are special, because:

(1) they can be so much more riveting and intrusive than print ads, which sit politely on a page;

(2) radio and TV stations use publicly regulated air waves, and are licensed to serve the public interest; and

(3) the broadcast audiences include millions of young children and teenagers who watch and listen to everything adults tune in on, in addition to the minimal amount of programming produced specially for them.

Each week, television reaches 90 percent of all teens and 92 percent of all children. Teenagers watch TV 3.5 hours a day and youngsters aged 2 to 11 spend close to 4 hours glued to the tube.(9) Many children spend more time watching television than they spend with their parents, their friends, or in school. These young people are exposed to thousands of seductive ads for alcoholic beverages on radio and television long before they are even of legal age to drink. Is it any surprise that we regularly hear stories of 6-year old children for whom "Miller Time" and beer jingles have become buzz words? Consider that nearly a third of 4th to 6th graders responding to a Weekly Reader survey on alcohol reported that TV and movies made alcohol seem like fun. And that only about 30 percent of 5th through 12th graders consider alcohol a drug, compared to about 90 percent who so identify marijuana. [See, "A Study of Children's Attitudes and Perceptions About Drugs and Alcohol," Weekly Reader Periodicals, Xerox Education Publications, April 1983.]

Kids grow up in a sea of ads that link social, business and athletic success to the alcoholic beverage of choice. Broadcast ads play a notable socializing role in children's lives, telling children time after time, day after day, that drinking is an essential ingredient of a happy, successful, American life. A steady barrage of "Miller Times," "Bring Out Your Best," and "This Bud's For You," serves to provide strong psychological and emotional support for drinking alcohol. These appeals do not even pretend to contain basic consumer information about the products. At a time when alcohol problems and heavy drinking among young people are epidemic and when more youths are trying alcohol at younger and younger ages, increasing their risks of becoming problem drinkers later in life, these one-sided messages promoting drinking are destructive and patently out of step with society's efforts to stem the tide of alcohol abuse.

IV. THE FAILURE OF VOLUNTARY ADVERTISING GUIDELINES

For years, the broadcasting, wine, and beer industries have claimed that their voluntary advertising codes adequately protect the public from inappropriate commercials. Such codes, have provided the shadow of protection without the substance. The only code that has worked to the public's benefit, and deserves special praise, is the generally respected, self-imposed ban on broadcast liquor advertising. We are frankly puzzled by the hypocrisy of the broadcasters' self-imposed ban on ads for distilled liquor products that are little different from beer and wine. If the networks' bans reflect a genuine concern for the public's health and safety, surely they should be extended to other alcoholic beverages, which are just as likely to be linked with highway deaths, drownings, spousal abuse, and the raft of other alcohol-related problems. Also, while liquor companies run full-page advertisements that point out that typical drinks of liquor, wine, and beer all contain about the same amount of alcohol, liquor producers that own wineries still advertise their wines on radio and television.

The voluntary codes all decry advertising aimed at young people. Yet, who would deny the youth appeal of Wild Irish Rose wine ads that feature contemporary rock music, break-dancing, and a Michael Jackson look-alike? Surprisingly, only one national network, NBC, refused to run the Wild Irish Rose ads.(10) This is in clear violation of the Wine Institute's Code of Advertising Standards that states: "Any advertisement which has particular appeal to persons below the legal drinking age is unacceptable." Are those Schlitz Malt Liquor spots that use rock or country music much different? Or the Budweiser Lite ads that depict athletes to sell viewers on the idea that that beer will "bring out your best?" Miller Lite's ads use many famous and even recently retired athletes and are clearly attractive to youths. (While the retirees may not look like college kids, children often respect or idolize adults and their parents' heroes.)

The lack of respect for the voluntary codes as well as for federal regulations, is well-illustrated by last year's rejection (as violative of federal regulations) by the Bureau of Alcohol, Tobacco and Firearms of a series of Budweiser advertisements featuring car racing and well-known race car drivers. In a January 27, 1984 letter to Anheuser-Busch, Richard G. Allen, Chief of the Product Compliance Branch of BATF, advised of BATF's "long standing position that advertisements containing prominent athletes convey the erroneous impression that the use of the advertised beverage is conducive to the development of the athlete's prowess, has attributed to the athlete's success in his field of endeavor or at least has not hindered the athlete in his performance." Mr. Allen also noted that BATF was "unable to condone any advertising for alcoholic beverages which is linked with the operation of an automobile, [because] any such promotion is not in the best interests of the general public...."

Anheuser-Busch agreed to correct the ads, but, less than one month ago, on April 27, 1985, Anheuser-Busch sponsored the CBS Sports telecast of the "Budweiser International Race of Champions," featuring 12 identical Budweiser emblazoned automobiles and 12 prominent race car drivers, each clothed in a "Budweiser" racing outfit. Now that the program itself has become the promotion, BATF may no longer act. So much for Anheuser-Busch's concern for the public interest!

Some ads are aimed at heavy drinkers and encourage heavy drinking (11), despite brewing industry advertising guidelines that proclaim: "Beer advertisements should neither suggest nor encourage overindulgence." Watch the Coors Lite ad that features pop music and shows youthful models at a carnival. The music says drink "beer after beer, and don't hold back." Another ad for this product recommends drinking all night long. (12) Commercials for Harvey's Bristol Cream Sherry tell viewers to drink out of big tumblers instead of the traditional tiny sherry glasses. The drinks in the tumblers contain probably five times as much alcohol. And then there are the commercials that encourage regular or daily drinking: "put a little weekend in your week" with Michelob, and reward yourself after work every day with Miller or Budweiser beer.

This is a sampling of some of the worst alcohol commercials of recent months that have aired notwithstanding industry's purported attempts at self-regulation (a more comprehensive videotape is available for the Committee's review). But even if these and similar ads were replaced, we would still be left with an enormous imbalance between glamorizing ads and honest information about alcohol. Virtually no PSAs inform the public of alcohol's alarming connection to spousal and child abuse, to suicide, to violent crime, and to thousands of industrial fatalities and non-auto accidents. (See attached "Estimated Alcohol Related Problems and Costs." Exhibit III) Much the same holds true in the case of information about the hazards of drinking, even moderately, during pregnancy. Likewise, far too few messages feature young-adult role models who present non-alcoholic lifestyles. People, particularly youngsters and adolescents who are shaping their attitudes about alcohol use, need to be reminded again and again that alcohol is a potentially dangerous, addictive drug that is causing more damage to our society than all the other drugs, legal or not, put together.

V. EVIDENCE LINKING ADVERTISING AND DRINKING

Any decision to reform alcohol advertising should be based on broad social considerations, as well as on a rational, commonsense inquiry into its effects. Rather than be stymied by a never-ending search for the perhaps elusive "definitive" proof that industry demands as a prerequisite to action, we should move forward with the best evidence that is available today. We would like to cite empirical evidence that is too often ignored in this debate. (We note in passing the ironic, even comic, need to demonstrate the obvious, namely that massive advertising expenditures tend to boost overall sales.) Following is some of the pertinent evidence:

* First, a massive natural experiment is being conducted in the U.S. right now. The question being asked is, "What would happen to alcohol sales if beer and wine were heavily advertised on radio and television, but liquor advertising were prohibited?" The results of this study, which is on-going, are convincing: beer and wine have steadily increased in sales and per capita consumption and have captured a progressively larger share of the alcoholic beverage market. At the same time, according to industry's own figures, liquor sales have declined in nine of the past ten years, despite heavy print advertising. Since 1971, per capita sales of beer rose 22 percent and of wine rose 13 percent. By stark contrast, sales of spirits have dropped 10 percent. (13) Viewed from another perspective, fifteen years ago liquor accounted for half of all retail sales of alcoholic beverages. Today, liquor accounts for only about one-third of the sales. Other factors may affect liquor sales, but this evidence supports the hypothesis that advertising has a significant effect. And it is not surprising today to witness attempts by the Seagram Company to open broadcast doors to promotions for liquor. Clearly, Seagrams, as well as other distillers, would like to use the most powerful and ubiquitous media available to bolster liquor's competitive position vis a vis beer, wine, and other beverages.

* Second, after Senate hearings on alcohol advertising (1976), four federal agencies (FTC, BATF, NIAAA, NHTSA) sponsored a major study on alcohol advertising. The study was supervised by Professors Charles Atkin and Martin Block at Michigan State University. They found that exposure to advertising correlated closely with beer and liquor consumption. They also found that young people were particularly influenced by celebrities in ads. The presence of famous comedians, retired athletes, sportscasters, and alleged wine-tasting experts in so many television ads is worth mentioning in this regard. Clearly, the time is more than ripe for BATF or FTC action. Professor Atkin more recently has reported that alcohol "advertising also exerts a significant impact on the frequency and quality of general alcohol consumption." (14)

* Dr. Paul C. Whitehead of the Toronto Addictions Research

Foundation has addressed the issue of alcohol advertising. He found "that advertising can successfully be used to alter market share and/or total demand under certain circumstances... [and that the] nature of the advertising and the structure of the industry are in keeping with the circumstances wherein advertising is most likely to increase total demand rather than simply affecting preference for certain brands." (15)

* The highly respected British medical journal, The Lancet, considered alcohol advertising several years ago and supported a total ban. The editors of the journal estimated that a ban on advertising could reduce alcohol consumption by 13 percent. The Lancet stated:

> A reduction of consumption by 13 percent may seem modest, but the impact could be considerable. The general view is that a fall in per capita consumption is reflected in a greater fall of consumption by heavy drinkers, who of course are those at greatest risk of alcohol-related harm. The likely reduction of consumption in this category has been reckoned as high as 25 percent, so a ban on advertising might save the nation much illness and misery. (16)

* Notably, two Federal Appeals Courts have upheld state legislative bans based on rational, common-sense evidence. After reviewing the record, the Fifth Circuit Court of Appeals concluded:

> [T]he advertising ban is sufficiently justified to pass constitutional muster. We simply do not believe that the liquor industry spends a billion dollars a year on advertising solely to acquire an added market share at the expense of competitors. Whether we characterize our disposition as following the judicial notice approach taken in Central Hudson Gas, or following the "accumulated, common-sense judgment" approach taken in Metromedia, we hold that sufficient reason exists to believe that advertising and consumption are linked to justify the ban, whether or not "concrete scientific evidence" exists to that effect. (17)

An insistence on quantitative proof demonstrating a causal connection between alcohol ads and abuse would blind this committee to evidence of the acculturating effect of ads. For young children, particularly, these ads form a vision of the world; they help define choices, formulate norms, create values. They are signposts that point mainly in one direction. That they seem not to create a society of Pavlovian dogs thirsting for a drink, or that their operation is not perfectly understood, should not deter this committee from ensuring that broadcasters at least provide a balance of information about products that are mind-altering, toxic, potentially addictive drugs.

Yet additional research could be done in the area of alcohol advertising, particularly with regard to the effect of saturation advertising on children, heavy drinkers, and recovering alcoholics. Advertising's effects on conditioning society to perceive drinking as an integral part of a satisfying, successful life should also be studied. Unfortunately, most of the existing research has been sponsored by industry, and is therefore highly suspect. We would like to see more research, but do not believe that legislators should postpone action pending scientific proof acceptable to the beer, wine, and broadcasting industries. While such research inched along, advertisers would continue to drown children (and adults) in a sea of seductive ads that promote a culture of drinking.

This Committee and others interested in getting to the heart of industry's intentions would benefit immeasurably by inspecting the unpublished research, internal memos, and marketing strategies of brewers, vintners, ad agencies, and broadcasters. New studies, in all likelihood, would only corroborate the great deal of evidence that is already privately available. As one case in point, I would like to note for the record a Coors Company "Marketing/Advertising Fact Sheet" (July 1982) that states: "The target audience for Herman Joseph's is male 18 to 34 with emphasis on the 18 to 24- year-old." Interestingly, this beer contains 10 percent more alcohol than Coors' regular beer. Even today, as an increasing number of states raise their legal purchase age to 21, we continue to read in Advertising Age magazine that wine cooler companies and brewers persist in wooing 18 year olds, in "21" states and with national campaigns. Also, at the same time as Anheuser-Busch announced its much-heralded "moderation" ads featuring ballplayer Steve Garvey, only trade press mention was made of its complete underwriting of a new rock group, USA Band, which will tour the country and promote Anheuser-Busch beers. The demographics of target broadcast audiences, available from industry sources, would provide equally interesting indications of the companies' intentions.

VI. RESPONSES TO DEFENDERS OF ALCOHOL COMMERCIALS

The industry's public relations people are quick to oppose restrictions on alcohol advertising on the grounds that ads merely switch drinkers from one brand to another, and do not increase consumption. Such claims are ludicrous. Undoubtedly, broadcasters would not make such arguments when they are wooing advertisers, nor would marketers seeking beverage clients concede such a limitation. As an editorial in Advertising Age magazine (August 7, 1978) pointed out, "A strange world it is in which people spending millions on advertising must do their best to prove that advertising doesn't do very much!"

As long ago as 1954, Representative Charles A. Wolverton, then Chairman of the House Committee on Interstate and Foreign Commerce that was conducting hearings on the advertising of alcoholic beverages, expressed skepticism of industry's argument:

> I realize Members of Congress are often naive at times, but I did not know they were so naive that anyone would feel justified in saying to them that the distiller does not expect to convert nonusers to the product but merely hopes to secure a larger share of an already existing market. That demands a degree of credulity that I do not possess. (17a)

Industry's marketing specialists, unlike the public relations spokespersons, cheer efforts to boost beer, wine, and liquor consumption. For example, the advertising executive for one wine company said, "I think the whole business is going to try to broaden its consumer base. We'd like to see per capita consumption increase to 2.5 gallons." (18) Even the current Vice President for Research of the U.S. Brewers Association last fall reminded brewers and beer wholesalers that they were "competing ... with not only spirits and wine, but non-alcoholic beverages as well ... and beer must be positioned generically if success in the marketplace is to be achieved." (19) Another ad executive, Charles Sharp, said, "I am confident that any private enterprise, whether the automobile business or liquor business, is trying to keep their business by expanding their market." (20)

One NBC executive said, "People are not creating messages with malice aforethought ..." in broadcast alcohol ads. (21) However, the issue here is not malice. Rather, it is the irresponsible commercial behavior that sells as much air-time or as much alcohol without adequate regard to the societal consequences, unintended though they may be. Young people watch television all day long, and broadcasters must simply accept the fact that young people are in the audience. The word "broadcasting" itself reflects the notion that the signals are not narrowly targetted, but reach a broad market. But, beyond the incidental appeals to young people, there are those that are more direct. Beer and wine are heavily advertised on youth-oriented late night music and comedy shows, and rock, soul, and country music radio shows. The radio ads can be particularly insidious, because they often blend into the programming. In recent months we have seen reports that brewers and vintners will be expanding their marketing efforts from sports telecasts, the ratings of which have been declining, to prime time shows. This time slot also has large numbers of youth viewers.

Industry officials have demanded that research prove a strict causal connection between advertising and alcohol problems. As discussed above, credible research -- and marketers statements -- demonstrate advertising's positive effects on consumption. Nevertheless, the more relevant question is whether research has proven that the $920 million worth of radio and television advertising does NOT increase alcohol consumption and alcohol problems. This is the test that society should long ago have demanded of alcohol advertisers before allowing the purveyors of a potentially addictive product to hawk their goods on the public airwaves unbalanced by information about the potential risks associated with use of these products. It is this same test that should be applied today in society's efforts to reduce alcohol problems.

Another of industry's favorite arguments claims that the ads do not encourage abuse, but rather only moderate use of alcohol. Sadly, there are millions of Americans for whom any use might constitute abuse. Few, if any, broadcast messages -- ads or psa's -- inform pregnant women that drinking during pregnancy may harm the unborn, or advise the nearly 30 million children of alcoholics of the increased likelihood that they will suffer problems with alcohol. Despite numerous warnings on the dangers of drinking and driving, how often are children and adolescents supported in making a decision not to drink at all? Adolescent drinking is not only against the law but is connected to violence, vandalism and other crimes, poor academic performance, teenage suicide, and an increased risk of alcohol and other drug problems later in life.

For these high risk groups, more so than for the rest of us, any encouragement to drink is an invitation to abuse alcohol.

VII. FIRST AMENDMENT CONSIDERATIONS

Critics of alcohol commercials have called for either equal time for health messages about alcohol or an end to the ads. Industry spokespersons have contended that a ban on advertising would violate purported commercial speech "rights" under the First Amendment to the U.S. Constitution, but have been far less confident about asserting such arguments in the context of mandated counter-ads.

In 1971, a federal court rejected a similar First Amendment challenge to Congress' statute prohibiting broadcast cigarette advertising. Capital Broadcasting Co. v. Mitchell, 333 F. Supp. 582 (U.S. Dist. Ct., Dist. of Col., 1971), aff'd mem, 405 U.S. 1060 (1972). In the case of alcohol, UCLA constitutional law professor Steven Shiffrin has likewise noted: "There is no war between the First Amendment and common sense. A carefully drafted statute prohibiting alcoholic beverage advertisements would not contradict any principles of First Amendment law."

The constitutionality of alcohol ad bans has already been affirmed by federal courts. Just last year the U.S. Supreme Court declined to overturn a decision by the U.S. Court of Appeals for the Fifth Circuit which upheld a Mississippi state ban on alcohol advertising. *Dunagin et al. v. City of Oxford, Mississippi* 718 F.ad 738 (1983). A similar ban was upheld, over First Amendment challenges, by the Tenth Circuit Court of Appeals. *Oklahoma Telecaster Ass'n v. Crisp*, 699 F.2d 490 (1983) rev'd on non-First Amend. grounds in *Capitol Cities Cable, Inc. v. Crisp*, ___ U.S. ____ (1984).

Support for the constitutionality of alcohol advertising bans has also been voiced by other noted First Amendment experts, including Stanford Law Professor Marc A. Franklin. As Professor Franklin observed in his February 2, 1985 letter to Senator Hawkins:

> It is hard to imagine what [U.S. Supreme Court] Justice, let alone what five Justices, would vote to invalidate a properly drafted Congressional statute enacted to reduce the annual toll of documented harms attributable to a perceived relationship between alcohol advertising and alcohol abuse.

In other words, if Congress acts to restrict ads based on "a *perceived* correlation between commercials for alcoholic beverages and the existence of alcohol abuse," the Court would defer to its judgment. (See attached Marc Franklin letter, Exhibit IV)

Another First Amendment scholar, University of Texas law professor Scot Powe, has observed: "Congress has broad powers to regulate broadcasting .... If I were the broadcasters, I would not place a great deal of reliance on the commercial speech cases ...."(21a)

Of course, ordering equal time for health and safety messages regarding alcohol is even less constitutionally troublesome, and is consistent with First Amendment principles that promote "more information" to facilitate the free flow of ideas.

VIII. THE CIGARETTE EXPERIENCE

Industry spokespersons also maintain that a ban on broadcast alcohol advertising would not stop people from drinking, just as they allege that the ban on cigarette commercials has not prevented people from smoking. For example, National Association of Broadcasters vice-president Shaun Sheehan says that "cigarette consumption is way up." A ban on cigarette commercials has never been held out to be a panacea, particularly when the tobacco companies have waged massive new campaigns to attract and retain smokers. In addition to the noisy introduction of new products and the unprecedented level of print and billboard advertising that portray smoking as part of a beautiful, happy, and youthful lifestyle, tobacco companies even flout the law by cleverly keeping their brand names on TV screens during tennis matches, football games, and hockey contests.

The absence of cigarette broadcast ads, with their sexy, alluring, macho images, has certainly enhanced the ability of anti-smoking programs to have an impact. People still smoke, but since the ban on broadcast cigarette ads, smoking practices have changed dramatically. Since 1971, the number of cigarettes smoked per capita has declined by 15.5 percent, and tobacco use has declined by 25 percent per capita (22) (cigarettes contain less tobacco than they once did.). Per capita cigarette consumption is now at its lowest point since 1949. Also, daily smoking among high school seniors declined from approximately 20 percent among boys in 1976 to 14 percent in 1983, and among girls from 17.5 percent in 1976 to 15 percent in 1983. (23) These declines should be contrasted to substantial increases that likely would have occurred if cigarette ads had not been banned, excise taxes not raised, warning labels not required, and educational efforts not undertaken.

Conspicuously missing in this argument against a ban is a recognition of the media's ability to educate the public. Even today, broadcasters boast of the effectiveness of their drinking-driving public service announcements, which they claim have contributed to the elimination or reduction of drunk driving fatalities in certain localities during the past holiday season. Similarly, and in no small measure, cigarette counter-ads were central in reducing cigarette consumption and, in helping to change public attitudes about smoking.

The cigarette experience offers another important lesson not adequately recognized: reforming broadcast advertising without taking other actions will yield only a limited reduction in alcohol problems. To reap maximal effect from a ban on broadcast alcohol ads, or from an equal time measure, this nation needs to initiate a comprehensive program, the individual elements of which, as described above, would interact in a cooperative fashion to have the greatest impact on one of the most serious health and social problems of our time.

IX. ALCOHOL AD REVENUES

Broadcasters complain that the costs related to either a ban or an equal time requirement would be onerous. The historical evidence is that they will survive and prosper, just as they weathered the congressional ban on cigarette ads and the voluntary ban on liquor advertising. According to industry sources, the $170 million that radio stations receive from the alcohol industry each year represents slightly less than 3 percent of their total revenue.(23a) For television stations and cable operators, the approximately $612 million in alcohol ads represents just over 3 percent of total revenues.(23b)

Moreover, even if a ban were ordered, stations would quickly replace most of the alcohol ads with other advertising. It is incredible to suggest, as broadcasters do, that the only advertised product that sports fans have in common is beer. In fact, stations are already replacing beer sponsors of sports programs, as brewers move their sponsorship from sports into other programming. No noticeable lack of football or basketball contests has resulted from this shift. Wall Street analyst Alan Gottesman, of L.F. Rothschild, Unterberg, and Towbin, recently reported that a ban on alcohol advertising would not disrupt the TV networks.(23c) He found that network sports advertising revenues derive from a broad variety of sources, and that the automotive ad category contributed more revenues than ads for alcoholic beverages. Those other sources include automobiles, computers, travel, tires, the armed forces, hardware, tools, and other products. This view is also held by Mark Albion, a marketing economist at the Harvard Business School, who foresees only temporary minimal revenue shortfalls if a ban were to take effect.

Labeling the National Association of Broadcasters' contentions of impending economic disaster "unbelievably ludicrous," University of Central Florida professor of communication, Thomas O. Morgan, likened "the gulf left by the loss of those [cigarette] ads ... [to] the hole left in a bucket of water when one pulls his hand out. Other advertisers moved in so rapidly that the industry and the viewing public barely noticed the absence of cigarette ads."(23d)

In determining the economic cost of mandated "counter-ads," one must examine stations' current voluntary commitment of time for considerable numbers of drunk-driving spots, at apparently no overwhelming hardship. Many broadcasters have, in the last few months, in response to pressure from Project SMART and other groups, demonstrated a capacity to air public service announcements, and, at the same time maintain high levels of profitability. Protestations of financial ruin are exaggerated and self-serving dodges by broadcasters to avoid public responsibility regarding their drug promotions.

X. OTHER INDUSTRY ARGUMENTS

One final contention from the industry's trawler of red herrings is that the Soviet Union, Sweden, and other nations that have banned broadcast alcohol advertising still have alcohol problems. The key question to ask in this regard is whether those nations' drinking problems would be greater if their citizens were barraged with the most sophisticated, seductive electronic advertising assault imaginable. It is naive to predict that alcohol problems would not increase.

Contrary to industry's contentions, the Swedes have not recently instituted a ban on broadcast ads. They have never permitted such ads. Though they drink one-third less alcohol than Americans, Swedes still have alcohol problems. But, unlike American policy-makers, the Swedes have implemented a comprehensive program that includes education, steep taxes, drunk driving laws, and ad bans, and seem to be making real progress. The evidence is illuminating:

* per capita alcohol consumption declined 21 percent between 1976 and 1983. (24)

* the percentage of 9th grade boys and girls who acknowledge drinking once a month or more declined from 39 percent in 1979 to 25 percent in 1981. (25)

* the percentage of sixteen-year old boys who stated that they consumed the equivalent of half a bottle of liquor or more when they drank dropped from 40 percent during the 1970s to 28 percent in 1981. (26)

* the number of people enrolled in public institutions for alcoholics declined from 2738 to 2400 between 1975 and 1981. (27)

France, which has also taken a comprehensive approach, has experienced similar reductions in alcohol problems as per capita consumption has decreased over the last twenty years.(27a)

These trends are in sharp contrast to U.S. data that indicate relatively stable, high levels of alcohol use among high school students. Indeed, the percentage of high school seniors who report binge drinking -- five or more consecutive drinks -- at least once in the two weeks preceding the survey is at an alarming 40 percent. High school senior binge drinkers have increased about 10 percent since 1975. (28)

XI. RECOMMENDATIONS

While in recent months broadcasters have aired an unprecedented number of drinking-driving PSAs, that temporary effort is suspect given that it comes on the heels of public demands for congressional action.

Major reforms are needed if we want to achieve a balance in the information young people and others receive about alcohol. Therefore, CSPI and the many other supporters of Project SMART urge this Committee to support H.R. 2625, the "Fairness in Alcohol Advertising Act of 1985" proposed by Congressman John F. Seiberling. This bill requires broadcasters to provide equal time for public service announcements concerning alcohol. The PSAs would cover all aspects of alcohol education, not just drunk driving, and many would be focussed at specific high-risk populations: adolescents, children of alcoholics, pregnant women, and alcoholics. With the certainty of air-time being available, numerous spots would be developed by private organizations, such as the National Council on Alcoholism and the PTA, and federal agencies, including the National Institute on Alcohol Abuse and Alcoholism. While the PSAs need not be placed directly adjacent to ads, the quality and quantity of air time would have to equal that of the ads. This approach would insure that the advertisers' highly biased messages are balanced by truthful and useful information about the risks and consequences of drinking.

In addition to endorsing "equal time," we urge this Committee to examine other measures that will help deglamorize the use of alcohol, particularly for young people. Specifically, we ask this Committee to support legislation that will:

1) bar the use of celebrities and athletes in ads;

2) eliminate ads that connect drinking with sports or with other activities requiring a high degree of alertness;

3) eliminate advertising appeals that suggest heavy drinking or excessively rapid consumption;

4) restrict the use of "lifestyle" ads that suggest desirable outcomes in connection with the use of an alcoholic beverage.

Whatever approach to reforming powerful broadcast advertising is ultimately taken, we urge that legislation also apply to cable television stations. While, technically, cable is not considered broadcast, there is no difference as far as television viewers are concerned. It would be an avoidable outrage, if alcoholic beverage producers were to move quietly from broadcast to cable to escape the restrictions.

CONCLUSION

In summary, I repeat that the hundreds of local and national organizations supporting Project SMART greatly appreciate the vision of this Committee in inquiring into the important issue of broadcast alcohol advertising. Nothing but benefits for the American public can follow. Thank you for the opportunity to present our views.

FOOTNOTES

1. *Alcohol and Public Policy: Beyond the Shadow of Prohibition*, National Academy Press, Washington, D.C. 1981.

2. *Third Special Report to the U.S. Congress on Alcohol and Health*, NIAAA, June 1978.

3. *The Effectiveness and Costs of Alcoholism Treatment, Health Technology Case Study 22*, Office of Technology Assessment, U.S. Congress, March 1983. "Updated Costs to Society of Alcohol Abuse, Drug Abuse, and Mental Illness, 1983", Research Triangle Institute, July 1984.

4. *Fifth Special Report to the U.S. Congress on Alcohol and Health*, December 1983.

5. *The New York Times*, Dec. 26, 1984.

6. Consumer Price Indexes from Bureau of Labor Statistics; advertising figures from various issues of *Advertising Age* and *Impact* Newsletter (M. Shanken Communications).

7. Bureau of Labor Statistics, Average Consumer Price Index for 1970 = 116.3, 1983 = 298.4.

8. *Business Week* Mag., February 25, 1985.

9. "TV Basics," Television Advertising Bureau, New York.

10. *Wall Street Journal*, January 30, 1985, p. 10.

11. A noted advertising authority has observed: "Liquor advertising to the young or to the heavy drinker, if it is effective even in the slightest, is socially costly and morally questionable." M. Schudson, *Advertising, The Uneasy Persuasion*, 240 (Basic Books, 1984).

12. According to the *Wall Street Journal*, Coors has recently withdrawn some of these ads, *supra* note 7.

13. *Alcohol and Health* 1983, p. 1.

14. Paper presented at 1984 "Control Issuen in Alcohol Abuse Prevention," conference, Charleston, S.C., Oct. 1984.

15. "Is Advertising Effective? Implications for Public Health Policy", B. Rush and A. Osborne (eds.), *Evaluation Research in the Canadian Addictions Field* 146 (1983).

16. *The Lancet ii* 1175 (Nov. 29, 1980).

17. *Dunagin, et al. v. City of Oxford, Mississippi*, 718 F.2d 738 (5th Circuit, 1983).

17a. *Hearings*, Committee on Interstate and Foreign Commerce, House of Representatives, Eighty-Third Congress, May 19-24, 1954.

19. "The Brewing Industry in Transition, Trends and Prospects for the 1980's', Speech presented at the 47th Annual Convention of the National Beer Wholesalers' Association, October 30, 1984, delivered by Phillip C. Katz, Senior Vice-President--Research, United States Brewers Association (reported in *Brewers Digest*, November 1984).

20. Interview, August 11, 1982, noted in M. Jacobson, G. Hacker, R. Atkins, *The Booze Merchants* 145 n. 16 (1983).

21. Betty Hudson, "CBS Evening News," Dec. 24, 1984.

21a. Thompson, "The Battle is Brewing," Wash. Post, March 24, 1985 (Sunday ed.)

22. "Tobacco Situation," various issues, USDA Publication (1984).

23. "Drugs and American High School Students", p. 51 (1984, U.S. Department of Health and Human Services).

23a. Gross 1984 revenues from TV Advertising Bureau and Radio Advertising Bureau; beer and wine advertising expenditures from *Advertising Age*, February 11, 1985 (15% advertising agency commission deducted from gross beer and wine ad expenditures in calculating the percentages of broadcast revenues).

23b. *Id.*

23c. "Beer Ad Ban Won't Hurt Nets," *Advertising Age,* March 11, 1985.

23d. T.O. Morgan, "Fear-mongers argue in favor of beer ads on TV," Orlando Sentinel, Sat., Feb. 16, 1985.

24. Fact Sheets on Sweden, "Alcohol and Drug Abuse in Sweden", FS 77 j Ohi, The Swedish Institute, Stockholm (July, 1984).

25. Fact Sheets on Sweden, "Facts and Figures about Youth in Sweden", FS 88 Ohfb, The Swedish Institute, Stockholm (December, 1983).

26. *Id*.

27. Social welfare statistics, Table 360, Swedish embassy, Washington, D.C.

27a. Brewers Association of Canada, *International Survey: Alcoholic Beverage Taxation and Control Policies* (5th ed., 1982), p. 114, 125.

28. "Student Drug Use in America" (1982, National Institute on Drug Abuse).

EXHIBIT I

March 31, 1982

Dear Sir or Madam:

The undersigned organizations and individuals share a deep concern about health and consumer problems and policies. In particular, we are concerned about the massive, complex, and vexing problems related to the consumption of alcoholic beverages and the practices of the alcoholic beverage industry.

The harm to drinkers and the rest of society due to cirrhosis, impaired learning, obesity, cancer of the mouth and throat, drunken behavior, mental retardation, time lost from work and shoddy workmanship, traffic deaths, and family violence is enormous. Identifiable economic losses amount to $75-100 billion per year. In one way or another, alcohol affects everyone.

Per capita consumption of alcohol is increasing gradually --about ten percent in the past decade-- and may increase faster as marketing budgets and availability increase. A special problem --and of special concern-- is teenage alcoholism. The recent finding of the University of Michigan's Institute for Social Research that 41 percent of high school seniors indulged in binge drinking (five or more drinks in a row) within a two-week period is truly shocking. Another government-sponsored study, this by Michigan State University, found that one out of eight high school freshmen and sophmores had drunk five or more beers in a typical week. The MSU researchers concluded that beer and liquor advertising is especially effective with youths and actually increases alcohol consumption.

Despite the severity and pervasiveness of alcohol problems, the federal government is reducing its role in prevnting or ameliorating them. This leaves a void that could be filled, at least in part, by private efforts, including those of industry. Voluntary industry efforts to cope with social problems are a keystone of President Reagan's philosophy. In fact, the social responsibility of the industry shall be measured by what it does voluntarily in the coming months and years.

The alcoholic beverage industry has a unique responsibility in preventing alcohol problems, providing consumers with appropriate information about alcoholic beverages, and aiding consumers who suffer from alcohol problems. We recognize that many corporate officials share our concern about alcohol problems. Nevertheless, we would like to suggest a range of things that your company could do on its own or through industry-wide cooperation. While none of these steps individually will end alcohol abuse and alcoholism, together they would have a significant impact.

- Voluntarily list the number of calories per serving of product on every label, as they are now listed on reduced calorie beverages. Many Americans are more concerned about the calorie content than any other aspect of their foods and beverages.

- Voluntarily list on the label ingredients and additives used in your products, as a few companies --such as Latrobe Brewing Co.-- are already doing. Such lists could prove life-saving, and would be of interest to all consumers.

- Place the following notice on all labels: "If you have a drinking problem, call an organization listed under 'Alcohol Information' in the Yellow Pages." Facilitating treatment of alcoholism should be a high priority.

- Beer labels (in most states) and ads do not disclose the alcoholic nature of the product. Lack of this disclosure may contribute to the notion that beer is more a soft drink than an alcoholic beverage. Brewers should note on labels and in ads: "Beer is an alcoholic beverage."

- Review your advertisements and eliminate inappropriate messages. In particular,

  (a) Do not use sexually-oriented messages or illustrations in your advertisements. Such ads erroneously imply that the product will contribute to sexual happiness. The ads also encourage people to treat others as sexual objects rather than human beings.

  (b) Do not depict current or former athletes in ads. The use of athletes suggests, if only implicitly or subconsciously, an association between alcoholic beverages and athletic performance. Such ads are misleading.

  (c) Do not depict risky activities, such as auto-racing, skiing, canoeing, and mountain-climbing, that require mental alertness. Such ads misleadingly associate drinking alcohol with success in those activities.

  (d) Do not suggest in ads that alcohol will contribute to business or social success. In light of the millions of careers and families destroyed by alcohol-related problems, such ads are misleading.

- Cease all marketing efforts that are directed to or reach sizeable numbers of young children and teenagers. Specifically, this would include such measures as ending drinking contests at colleges, restricting broadcast advertising until after 9:00 p.m., cessation of advertising in college newspapers, and ending sponsorship of sports events. Do not depict young-looking people in advertising. It is vital to discourage alcohol abuse by children as well as adults.

- Contribute a sum of money equal to a significant portion of your marketing budget or your annual sales to an independent Foundation for the Prevention of Alcohol Problems. The Foundation would sponsor "advertising" and other educational programs to discourage heavy drinking, teenage drinking, and other inappropriate practices. The program would be planned by people, including some current and recovered alcoholics, drawn from health and alcoholism organizations, government, business and industry, university, consumer organizations, and other sectors.

- Voluntarily place warning notices on labels of all alcoholic beverages. Companies might use one notice --as proposed by Senator Strom Thurmond and Congressman George Brown-- or a rotating series of notices as the Swedish government requires on cigarettes and as several members of Congress have proposed for American cigarette packages. The notices would pertain to birth defects, traffic accidents, cirrhosis, decreased life expectancy, loss of mental acuity, and other problems related to the excessive or unwise consumption of alcoholic beverages. We would suggest such phrasing as "The Surgeon General advises pregnant women not to drink any alcoholic beverages", "Driving under the influence of alcohol is illegal", and "Smokers who drink alcohol increase their risk of mouth and throat cancer." The labels of at least one American wine company touch very lightly on health problems.

This list may seem long, but most of the suggestions are essentially without cost and easily done, and some might actually boost your share of the market. Please recall that the recent Michigan State University study on alcohol advertising showed that consumers thought more highly of ads that contained a health notice than similar ads without the notice. (Seagram's ads usually note "enjoy our quality in moderation" and are a step in the right direction.) The first companies to adopt the suggested measures would receive a great deal of favorable publicity. More importantly, though, the cost of any of these measures should be contrasted to the economic losses, health damage, broken families, and other consequences of alcohol abuse and alcoholism. The industry whose products are related to such enormous harm has a moral responsibility to help in substantial ways to reduce the harm. Finally, by taking voluntary actions now, future governmental actions could be avoided.

We look forward to your thoughts regarding these suggestions. If your company subscribes to some of these measures, please tell us of your experiences. We would welcome working with you on any of the measures that your company may consider instituting.

Sincerely yours,

Michael F. Jacobson

(signing for those listed below)

Action for Children's Television
Peggy Charren

American Council on Alcohol Problems
William Plymat

* Center for Science in the Public Interest
Michael F. Jacobson, Ph.D.

Community Nutrition Institute
Rodney Leonard

Consumer Federation of America
Steve Brobeck

Doctors Ought to Care
Rick Richards, M.D.

Robert Dupont, M.D. (former director of National Institute on Drug Abuse)
** American Council on Marijuana and Other Psychoactive Drugs

Mary T. Goodwin
** Montgomery County Nutrition Services

Hope House (Boston)
Jack Donahue

Media Access Project
Andy Schwartzman

James Mosher, Alcohol Research Group
** The Institute of Medical Sciences

National Citizens Committee for Broadcasting
Sam Simon

National Consumers League
Sandra Willett

National Women's Health Network
Belita Cowan

Remove Intoxicated Drivers
Doris Aiken

Students Against Drunk Driving (Fairfax County)
Kim Richey

Women Against Pornography
Dolores Alexander

Women for Sobriety
Jean Kirkpatrick, Ph.D.

* address responses to Michael Jacobson, Ph.D., Executive Director, Center for Science in the Public Interest, 1755 S Street, N.W., Washington, D.C. 20009, (202) 332-9110.

** for identification purposes only.

Additional Endorsements since letter was sent 3/31/83

Mothers Against Drunk Drivers
Candy Lightner

National Coalition on TV Violence
Thomas Radecki, M.D.

EXHIBIT II

ACTIONS REQUESTED IN PETITION TO THE FEDERAL TRADE COMMISSION

1. Commencement of a comprehensive, industry-wide investigation into alcoholic beverage advertising practices. This investigation should explore and determine the extent to which advertising encourages consumption of alcohol and the extent to which alcoholic beverage advertising may be encouraging certain highly vulnerable groups, including young and heavy drinkers, to use or abuse alcoholic beverages. The F.T.C. should use its powers of compulsory process as necessary to collect all relevant data, including the internal records of alcoholic beverage producers and their advertising agencies and marketing consultants. In carrying out this investigation, the F.T.C. should utilize any data previously collected by re-opening previously closed investigations of advertising apparently designed to appeal to actual or potential alcohol abusers (Anheuser-Busch, Inc., File No. 762-3111, and Somerset Importers, Ltd., File No. 762-3112).

2. Commencement of an industry-wide probe of alcoholic beverage promotional practices, other than advertising, directed at or affecting children and teenagers. This inquiry should focus on industry sponsorship of rock music concerts and performers, promotions by sports and other youth-hero celebrities, college sports tie-ins, reduced-price come-ons, student vacation festival sponsorships, college contests or sweepstakes that encourage heavy drinking, the distribution of T-shirts, hats, toys, and other paraphernalia emblazoned with alcohol producer logos or product names, and other promotional efforts.

3. Promulgation and enforcement of rules that delineate false, deceptive, misleading, and unfair advertising and marketing practices for alcoholic beverages. Petitioners recommend that these rules take into account the addictive nature of alcoholic beverages and the enormous and often devastating public health and social consequences associated with their consumption. We recommend the following:

- a. all advertising and other promotional practices aimed at or reaching large numbers of children, teenagers, or heavy drinkers should be banned.
- b. all remaining broadcast advertising for alcoholic beverages should either be banned or balanced by an equal number of announcements highlighting health consequences of alcoholic beverage consumption, discouraging inappropriate drinking patterns, and suggesting alternatives to alcoholic beverage consumption.
- c. all print ads and other promotional techniques other

than broadcasting must contain an explicit, conspicuous notice that discloses one or more of the hazards of alcohol abuse, including, but not limited to, drunk driving, birth defects, cancers, cirrhosis and possible dependency. These notices should rotate every 30 days, and should be graphic to insure universal comprehension.

d. any express or implied representations in any promotional technique, including, but not limited to, advertising, that link alcoholic beverage consumption with social, sexual, business success or athletic prowess, should be prohibited.

e. all alcoholic beverage promotional activities by athletic, show business or music celebrities should be banned.

f. alcoholic beverage marketing techniques that encourage abusive, excessive, or excessively rapid consumption should be banned.

g. alcoholic beverage marketing techniques that reduce the incentive for alcohol abusers to seek help to control an alcohol problem should be banned.

h. alcoholic beverage advertisements or other promotional techniques that, directly or implicitly, depict alcohol use in connection with potentially risky activities, including recreational, workplace and driving activities should be banned.

i. the use of subliminal techniques in alcoholic beverage advertising and other marketing should be banned.

In addition to requesting the above rules, the petition also cited specific ads that are themselves objectionable. as well as exemplifying types of ads that are objectionable. Products advertised include Crown Royal Whiskey (Seagram), Steel schnapps (Heublein), Sambuca Romana (Palmer and Lord), Johnnie Walker Black (Somerset Importers), Cuervo Tequilo (Heublein), Molson Ale (Martlet Importing), Dos Equis beer, Heileman Old Style beer, Miller beer, Budweiser beer, Jeremiah Weed bourbon, Seagram's V.O. Canadian Whisky, Coors Light beer, and Harvey's Bristol Cream sherry.

NOVEMBER 21, 1983

EXHIBIT III

ESTIMATED ALCOHOL-RELATED PROBLEMS AND COSTS*

PROBLEM		
Auto accident fatalities	50	25,000 deaths/yr
Suicides	up to 80	21,600 deaths/yr
Family abuse		
child abuse	up to 38	
spouse abuse	up to 60	
Accidents, non-auto		25,000+ deaths/yr
industrial fatalities	up to 40	
drownings	up to 68	
falls (fatal)	up to 70	
aviation fatalities	up to 40	
fires		
fatalities	50+	
burns	50+	107,000/yr
Violent crime		
robbery	up to 72	
rape	50	
assaults	up to 70	
homicides	66+	
Medical/psychosocial		
cirrhosis	up to 90	11,000+ deaths/yr
pancreatitis	75+	
malnutrition		
cancers of mouth, esophagus, larynx, liver and other organs	3	12,000 deaths/yr
birth anomalies (incl. FAS)	5	1,650/yr
alcohol dependence	100	5,000 deaths/yr
alcohol psychoses (DT's, etc.)	100	100,000 hospitalizations/yr
affective disorders (depressive or manic-depressive psychoses)		35,000 hospitalizations/yr

TOTAL DEATHS: 100,000-200,000 per year

TOTAL COSTS: $116.7 billion per year**

THE ECONOMIC COSTS OF ALCOHOLISM AND ALCOHOL ABUSE ARE TOPPED ONLY BY THE COSTS OF HEART AND VASCULAR DISEASES.

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* These figures were derived from reports of the National Institute on Alcohol Abuse and Alcoholism

** Research Triangle Institute

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Updated Costs to Society of Alcohol Abuse, Drug Abuse, and Mental Illness, 1983
(dollars in millions)

	Alcohol Abuse	Drug Abuse	Mental Illness	Total
Core Costs				
Direct				
Treatment and Support	$ 14,865	$ 2,049	$33,445	$50,359
Indirect				
Mortality[a]	18,151	2,486	9,036	29,673
Reduced Productivity	65,582	33,346	4,048	102,976
Lost Employment	5,323	405	24,044	29,772
Other Related Costs				
Direct				
Motor Vehicle Crashes	2,667	[c]	-	2,667
Crime	2,607	6,565	966	10,139
Social Welfare Programs	49	3	259	311
Other	3,673	677	831	5,181
Indirect				
Victims of Crime	192	945	-	1,137
Crime Careers	0	10,846	-	10,846
Incarceration	2,979	2,425	146	5,549
Motor Vehicle Crash (time loss)	583	[c]	-	583
Total	$116,674[b]	$59,747[b]	$72,775[b]	$249,196

Totals may not add due to rounding.

[a] At 6 percent discount rate.

[b] The total costs to society for each of the three ADM disorders are not comparable, since the completeness of data available for each cost category varied significantly. For example, the estimate of reduced productivity is relatively complete for alcohol abuse, only partially complete for drug abuse, and incomplete for mental illness.

[c] Although costs are hypothesized to occur in this category, sufficient data are not available to develop a reliable estimate.

Source: Research Triangle Institute.

Alc[illegible]lism Report, 7/31/84

Costs to Society of Alcohol Abuse, Drug Abuse and Mental Illness, 1980
($ in millions)

	Alcohol Abuse	Drug Abuse	Mental Illness	Total
Core Costs	$79,607	$29,451	$52,418	$161,476
Direct				
Treatment	9,487	1,200	20,961	31,647
Support	984	243	2,597	3,823
Indirect				
Mortality[a]	14,456	1,980	7,196	23,632
Morbidity[b]	54,680	26,028	21,664	102,372
Reduced productivity	(50,575)[c]	(25,716)[c]	(3,122)[c]	(79,413)
Lost employment	(4,105)	(312)	(18,542)	(22,959)
Other Related Costs	9,919	17,485	1,818	29,222
Direct				
Motor vehicle crashes (property loss)	2,185	d	-	2,185
Crime[b]	2,347	5,910	870	9,127
Public	(2,062)	(4,454)	(635)	(7,151)
Private	(261)	(1,345)	(235)	(1,841)
Property loss/damage	(24)	(111)	(-)	(135)
Social welfare program	38	2	201	241
Other	2,912	537	659	4,108
Indirect				
Victims of Crime	172	845	-	1,017
Crime careers	-	8,725	-	8,725
Incarceration	1,801	1,456	88	3,346
Motor vehicle crashes (time loss)	464	d	-	464
Total	$89,526[c]	$46,936[c]	$54,236[c]	$190,698

Totals may not add due to rounding.

[a] At 6 percent discount rate. As suggested by the PHS Guidelines document, the present value of lost future productivity due to premature mortality was also calculated using discount rates of 10 and 4 percent. The use of a 10 percent rate decreases indirect costs by the following amounts: alcohol abuse--$4,881 million; drug abuse--$704 million; and mental illness--$2,444 million. The use of a 4 percent rate increases indirect costs by the following amounts: alcohol abuse--$4,455 million; drug abuse--$630 million; and mental illness--$2,177 million.

[b] Components are indicated in parentheses.

[c] The total costs to society for each of the three ADM disorders are not comparable, since the completeness of data available for each cost category varied significantly. For example, the estimate of reduced productivity is relatively complete for alcohol abuse, only partially complete for drug abuse, and incomplete for mental illness.

[d] Although costs are hypothesized to occur in this category, sufficient data are not available to develop a reliable estimate.

Source: Research Triangle Institute.

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EXHIBIT IV

2870 Pacific Avenue
San Francisco, CA 94115
February 2, 1985

Hon. Paula Hawkins
Subcommittee on Alcoholism and Drug Abuse
United States Senate
Washington, D.C.

Dear Senator Hawkins,

Several weeks ago, Project SMART asked me to think about the constitutionality of Congressional restrictions on the broadcasting of commercials for beer and wine. I considered the subject, consulted with colleagues, and concluded that the Supreme Court would be likely to sustain legislation developed from an appropriate record.

When I told Project SMART my conclusions, I agreed to share my thoughts with journalists and others who might have questions. Project SMART has now asked me to share my thoughts with your subcommittee. I am, of course, speaking solely for myself; I have no formal connection with or financial arrangement with Project SMART or any other organization in connection with this subject.

I have concluded that if the Congress, persuaded by a perceived correlation between commercials for alcoholic beverages and the existence of alcohol abuse, were to pass properly drafted legislation banning the broadcasting of such commercials, it is unlikely that the Supreme Court would hold that such legislation violated the First Amendment.

Such a statute would come to the Court with a record demonstrating Congressional acceptance of data tying this advertising to such acknowledged social problems as drunk driving, other kinds of accidents, and family abuse, not to mention the ways in which alcohol abuse affects the drinker personally.

Although the Supreme Court has recently extended some of the protections of the First Amendment to so-called commercial speech, it has not yet considered any case in which public safety concerns are offered as primary justifications for the limits on what would otherwise be protected speech. Such a case would be a far cry from earlier controversies such as Virginia Pharmacy, (425 U.S. 748 (1976)), in which government sought to prevent pharmacists from advertising the prices of their prescription drugs, or Central Hudson, (447 U.S. 557 (1980)), in which government sought to bar promotional advertising by electric utilities.

If the Court were to approach the question of constitutionality by applying the four-part test of Central Hudson, the powerful governmental interest in public safety would go a long way to leading the Court to find that the requisite elements were met. The Court has never applied its commercial speech approach to a case in which physical safety of others was a serious concern, much less one with thousands of documented deaths and injuries suffered by strangers and family members at the hands of those who abuse alcohol. This situation does not remotely resemble cases in which the government seeks to reduce the consumption of energy, or to prevent consumers from making some self-affecting decision that a paternalistic government thinks might be shortsighted.

To the extent that the First Amendment in commercial speech cases is seen as protecting the flow of market information to potential customers for a product, this rationale does not comfortably fit beer and wine commercials. First, they convey very little market information to the audience (and some assert that what they do convey is misleading). Second, more than self-interested market decisions are involved when the purchase and consumption of the advertised product can so profoundly affect the very lives of others in the community.

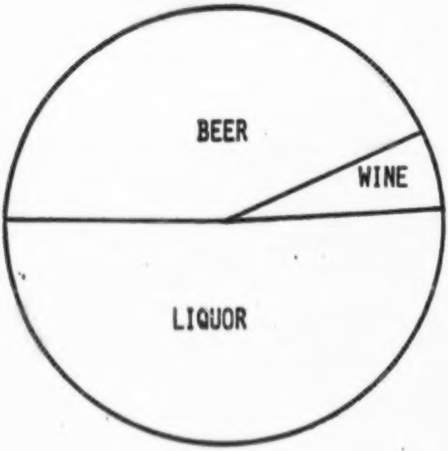
Because alcohol is the product being regulated, the Court may well decide to use a special standard that would permit government regulation even more readily than the Central Hudson approach would permit. No consumer product has had the special history in our country that alcoholic beverages have had. It has been the focus of deeply emotional debates from moral, religious, social, and safety perspectives, among others. What other commercial product has provoked such a spate of federal, state, and local regulation, or two constitutional amendments because of its extraordinary impact on the social fabric of the country?

The Supreme Court is unlikely to blind itself to this unique history when it confronts Congressional attempts to regulate various activities connected with the consumption of alcoholic beverages. In the commercial speech area, and in First Amendment cases generally, the Court has been quite fact-specific. (Indeed, the Supreme Court may be in the process of developing a special approach to alcohol regulation in such cases as California v. LaRue, 409 U.S. 109 (1972), and New York State Liquor Authority v. Bellanca, 452 U.S. 714 (1981). Although these cases address state regulations and the repeal amendment, they demonstrate judicial sympathy with efforts to control perceived evils flowing from the marketing of alcoholic beverages.)

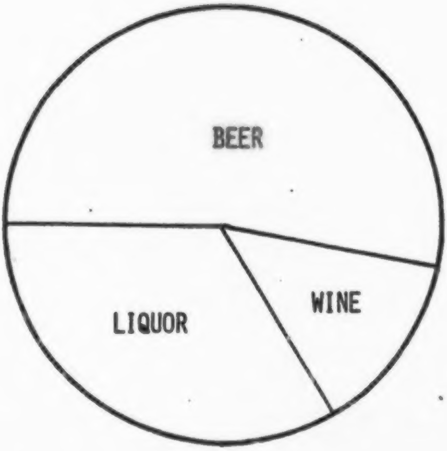
Finally, there is the Court's special treatment of broadcasting. The Court has permitted content regulation in broadcasting that it would not permit in other contexts. See, e.g., the concurring opinion of Justice Powell in FCC v. Pacifica Foundation, 438 U.S. 726 (1978), observing that during most of the day, broadcasters cannot reach adults without reaching children. "This, as the Court emphasizes, is one of the

U.S. RETAIL EXPENDITURES

1968



1983



SOURCE: Annual Statistical Review, DISCUS, 1983

THE CHRISTIAN SCIENCE MONITOR
EDITORIAL
TUESDAY, FEBRUARY 19, 1985

No to TV beer ads

A move is afoot in the United States to ban nationwide the advertising of beer and wine on television, on grounds the ads glamorize alcohol and contribute to the problems arising from drinking.

The effort is being pushed by a coalition of organizations, led by the Center for Science in the Public Interest. Earlier this month a Senate subcommittee held hearings on the issue. The endeavor is worthwhile; organizations and individuals that care about young Americans should support it actively. Alcohol use results in considerable financial and health problems for America, as a broad spectrum of the public is increasingly realizing.

Getting beer and wine ads off TV will not be easy. Some analysts are now saying it is unlikely the Congress can pass a law this year that forbids TV advertising; the opposition, which includes broadcasters and the alcoholic beverage industry, is extremely powerful.

Hard liquor is not advertised on television, as the result of an agreement between liquor manufacturers and the National Association of Broadcasters.

Precedent exists for a ban on beer and wine advertising. Cigarette advertising has not been shown on TV since 1970; a year earlier the National Association of Broadcasters, under heavy pressure from the Federal Trade Commission, agreed to end all cigarette advertising on television. In 1971 the United States Supreme Court held that such a ban was constitutional, over the objections of tobacco companies, which claimed it violated the First Amendment's protection of free speech.

As proponents point out, the television ad drive is a logical extension of the increasingly successful nationwide effort to combat drunken driving.

Proponents are saying in effect that it is time to attack a more fundamental issue: the advertising of beer and wine that seeks to entice the impressionable young to drink by a variety of subtle but insistent messages.

These commercials are shown on television programs watched by the young, such as sporting events. Particularly reprehensible is the use of sports figures, role models for the young, to sell beer in the commercials.

The effort to ban these ads from TV comes when per capita alcohol consumption has been declining in the United States, and the alcoholic beverage industry is fighting to reverse the decline. Televised ads are not the only effort to woo the young: Some breweries are sponsoring highly promoted beer nights on college campuses, featuring their own brands. Already alcohol is the No. 1 abuse problem on college campuses today.

Action is warranted to reduce the specious appeal of alcohol to the young. Banning beer and wine ads from TV would be a good first step. . . .

2870 Pacific Avenue
San Francisco, CA 94115
February 2, 1985

Hon. Paula Hawkins
Subcommittee on Alcoholism and Drug Abuse
United States Senate
Washington, D.C.

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I have concluded that if the Congress, persuaded by a perceived correlation between commercials for alcoholic beverages and the existence of alcohol abuse, were to pass properly drafted legislation banning the broadcasting of such commercials, it is unlikely that the Supreme Court would hold that such legislation violated the First Amendment.

Such a statute would come to the Court with a record demonstrating Congressional acceptance of data tying this advertising to such acknowledged social problems as drunk driving, other kinds of accidents, and family abuse, not to mention the ways in which alcohol abuse affects the drinker personally.

Although the Supreme Court has recently extended some of the protections of the First Amendment to so-called commercial speech, it has not yet considered any case in which public safety concerns are offered as primary justifications for the limits on what would otherwise be protected speech. Such a case would be a far cry from earlier controversies such as Virginia Pharmacy, (425 U.S. 748 (1976)), in which government sought to prevent pharmacists from advertising the prices of their prescription drugs, or Central Hudson, (447 U.S. 557 (1980)), in which government sought to bar promotional advertising by electric utilities.

If the Court were to approach the question of constitutionality by applying the four-part test of Central Hudson, the powerful governmental interest in public safety would go a long way to leading the Court to find that the requisite elements were met. The Court has never applied its commercial speech approach to a case in which physical safety of others was a serious concern, much less one with thousands of documented deaths and injuries suffered by strangers and family members at the hands of those who abuse alcohol. This situation does not remotely resemble cases in which the government seeks to reduce the consumption of energy, or to prevent consumers from making some self-affecting decision that a paternalistic government thinks might be short-sighted.

To the extent that the First Amendment in commercial speech cases is seen as protecting the flow of market information to potential customers for a product, this rationale does not comfortably fit beer and wine commercials. First, they convey very little market information to the audience (and some assert that what they do convey is misleading). Second, more than self-interested market decisions are involved when the purchase and consumption of the advertised product can so profoundly affect the very lives of others in the community.

Because alcohol is the product being regulated, the Court may well decide to use a special standard that would permit government regulation even more readily than the Central Hudson approach would permit. No consumer product has had the special history in our country that alcoholic beverages have had. It has been the focus of deeply emotional debates from moral, religious, social, and safety perspectives, among others. What other commercial product has provoked such a spate of federal, state, and local regulation, or two constitutional amendments because of its extraordinary impact on the social fabric of the country?

The Supreme Court is unlikely to blind itself to this unique history when it confronts Congressional attempts to regulate various activities connected with the consumption of alcoholic beverages. In the commercial speech area, and in First Amendment cases generally, the Court has been quite fact-specific. (Indeed, the Supreme Court may be in the process of developing a special approach to alcohol regulation in such cases as California v. LaRue, 409 U.S. 109 (1972), and New York State Liquor Authority v. Bellanca, 452 U.S. 714 (1981). Although these cases address state regulations and the repeal amendment, they demonstrate judicial sympathy with efforts to control perceived evils flowing from the marketing of alcoholic beverages.)

Finally, there is the Court's special treatment of broadcasting. The Court has permitted content regulation in broadcasting that it would not permit in other contexts. See, e.g., the concurring opinion of Justice Powell in FCC v. Pacifica Foundation, 438 U.S. 726 (1978), observing that during most of the day, broadcasters cannot reach adults without reaching children. "This, as the Court emphasizes, is one of the distinctions between the broadcast and other media to which we often have adverted as justifying a different treatment of the broadcast media for First Amendment purposes."

Those who deny the constitutionality of prohibiting the broadcasting of liquor advertising appear to anticipate that the Supreme Court will adopt a doctrinaire approach to a very new area of law that it has been developing case by case in contexts totally unlike the one facing your subcommittee. But the Court has been sensitive to subtle fact differences in the commercial speech cases, and to perceived differences between broadcasting and other media. This sensitivity indicates that the Court will approach any legislation in this area with great respect for the Congressional concern and for the way Congress has chosen to attack the problem.

It is hard to imagine what Justice, let alone what five Justices, would vote to invalidate a properly drafted Congressional statute enacted to reduce the annual toll of documented harms attributable to a perceived relationship between alcohol advertising and alcohol abuse.

Sincerely yours,

Marc A. Franklin

Marc A. Franklin
Frederick I. Richman Professor of Law
Stanford Law School
Stanford, CA 94305

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF THE SECRETARY

April 15, 1985

Michael F. Jacobson
Executive Director
Center for Science in the Public Interest
1501 Sixteenth Street, N.W.
Washington, D.C. 20036

Re: Omnibus Petition For Regulation of Unfair and Deceptive Alcoholic Beverage Advertising and Marketing Practices (Docket No. 209-46)

Dear Dr. Jacobson:

This letter is to inform you of the Commission's determination in response to the above-referenced petition. In this petition, the Center for Science in the Public Interest, along with 28 other organizations and three individuals, argues that even where current alcoholic beverage advertising and promotion practices do not expressly misrepresent the attributes of alcoholic beverage products, certain practices are, nevertheless, deceptive and/or unfair because they portray alcoholic beverage consumption and/or abuse in an appealing manner. The petition contends that such advertising and marketing practices cause increased consumption and alcohol abuse.

The petition seeks a number of Commission-imposed remedies for these alleged violations of the FTC Act, including rules banning all alcoholic beverage advertising and promotional practices aimed at, or reaching, large numbers of children, teenagers, or heavy drinkers, and regulations requiring rotational warnings in otherwise permissible print ads and the broadcasting of public service announcements designed to discourage inappropriate drinking habits. The petition also seeks an industry-wide investigation of alcoholic beverage advertising and promotional practices.

The Commission has determined to deny the petition insofar as it requests initiation of rulemaking proceedings, commencement of an industry-wide investigation and institution of enforcement actions challenging the legality of specified advertising campaigns. Nonetheless, the Commission will continue its ongoing review of alcohol advertisement and marketing practices to identify any that warrant challenge as deceptive or unfair under Section 5 of the FTC Act.

In reaching this decision, the Commission has carefully considered the issues raised in the petition, and the enormous personal tragedy and economic injury connected with alcohol abuse. It has found, however, no reliable basis on which to conclude that alcohol advertising significantly affects alcohol abuse. Absent such evidence, there is no basis for concluding that rules banning or otherwise limiting alcohol advertising would offer significant protection to the public. Moreover, to the extent that many of the alleged industry-wide practices challenged by the petition are open to legal challenge under Section 5, they are more appropriately analyzed under the Commission's unfairness standard than under the standard relating to deception. The Commission, however, currently does not have authority to issue rules governing commercial advertising on the basis of its unfairness jurisdiction. An industry-wide rulemaking based on a deception theory would be inappropriate given the lack of evidence of any widespread activity that may properly be characterized as misleading under the applicable law.

The fact that an industry-wide rulemaking does not appear to be a viable option, of course, does not eliminate the possibility that the Commission will bring lawsuits in individual cases where advertisements appear to be deceptive or unfair. The Commission will continue to monitor alcoholic beverage ads and will take action against any that it believes to be unfair or deceptive. To date, however, despite the existence of some advertisements of dubious taste or propriety there appears to be little evidence demonstrating either that advertisers of alcoholic beverages have violated Section 5 or that even if such a violation could be proven, an advertising-related remedy such as a full or partial ban would likely be effective in reducing alcohol abuse. Indeed, your petition itself appears to concede that there is little reliable evidence on how consumers respond to alcohol advertising -- or on whether advertising-related remedies would be effective.

We are not, of course, the only federal agency concerned with the effects of alcohol advertising. As you are aware, the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury (BATF) also has jurisdiction over alcohol advertising. As you also know, BATF currently is engaged in rulemaking proceedings that address many of the same issues as those raised by the petition. In response to BATF's request for comments in those proceedings, your organization and numerous others submitted comments similar to the statements and recommendations contained in the petition submitted to the FTC. For the Commission also to engage in rulemaking proceedings would be needlessly duplicative governmental action. Of course, to the extent that BATF proceeds in its consideration of the issues raised by the petition, the Commission intends to offer BATF staff its economic and policy expertise.

In addition to the Commission and BATF, there are other federal governmental agencies, state and local governments and many private-sector organizations at both the national and regional level that are concerned with the issue of alcohol abuse. These governmental and private organizations are engaged in activities such as public information campaigns to educate consumers about alcohol abuse and responsible drinking. Such efforts, in combination with other measures, such as stricter legal sanctions for drunk driving, can be an effective way to reduce the serious problems that stem from alcohol abuse. The Commission's staff is participating in a program sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the United States Department of Justice, which the Commission hopes will achieve additional study of these efforts and greater coordination among groups disseminating such information.

Finally, in addition to providing appropriate assistance to BATF regarding its rulemaking proceedings, monitoring alcohol advertisements and marketing practices for deceptive or unfair claims, and participating in the OJJDP program, the Commission will continue to examine how it can best apply its advertising and marketing expertise to the important issues raised by the petition.

By direction of the Commission.

Emily H. Rock

Emily H. Rock
Secretary

RECOMMENDATIONS OF THE STAFF OF THE FEDERAL TRADE COMMISSION

OMNIBUS PETITION FOR REGULATION OF UNFAIR AND DECEPTIVE ALCOHOLIC BEVERAGE ADVERTISING AND MARKETING PRACTICES

Docket No. 209-46

March 1985

NOTE: These recommendations reflect the views of the Commission's Bureaus of Consumer Protection and Economics. They do not necessarily represent the views of the Federal Trade Commission or any of its individual Commissioners.

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BUREAU OF
CONSUMER PROTECTION

MEMORANDUM

March 6, 1985

TO: Commission

FROM: Carol T. Crawford, Director cTc
Bureau of Consumer Protection

Wendy L. Gramm, Director wlg
Bureau of Economics

SUBJECT: Omnibus Petition for Regulation of Unfair and Deceptive Alcoholic Beverage Advertising and Marketing Practices (Docket No. 209-46)

We are forwarding our staffs' recommendation that the Commission deny the petition filed by the Center for Science in the Public Interest, along with 28 other organizations and three individuals, seeking specific Commission regulation of alcohol beverage advertising and marketing. The petition argues that even where current alcohol beverage advertising and promotional practices do not expressly misrepresent the attributes of alcohol beverage products, they are, nevertheless, deceptive or unfair because they portray alcohol beverage consumption in an appealing manner. The petition contends that such advertising and marketing practices cause increased consumption and alcohol abuse.

The petition seeks a number of Commission-imposed remedies for these alleged violations of the FTC Act, ranging from the ban of all alcohol beverage advertising and promotional practices aimed at, or reaching, large numbers of children, teenagers, or problem drinkers, to requiring rotational warnings in otherwise permissible print ads and requiring the broadcasting of public service announcements designed to discourage inappropriate drinking habits.

The petition suggests several theories under which the challenged practices may be deceptive or unfair under Section 5, but offers little or no factual data in support of its theories or its proposed remedies. Moreover, the petition recognizes that the existing research does not demonstrate a causal connection between alcohol beverage advertising or marketing practices and increased alcohol consumption or alcohol abuse.

Under either a deception or an unfairness analysis, the Commission would need reliable evidence that the challenged practices are likely to result in alcohol abuse.[1] Even evidence indicating that alcohol advertising increases consumption is unlikely to be sufficient to support a finding of deception or unfairness because, obviously, increased consumption does not necessarily result in alcohol abuse.

A review of alcohol beverage advertising indicates that the advertising practices criticized by the petition do not expressly urge consumers to become problem drinkers. The challenged advertising and other practices appear, on their face, as image promotions signaling the availability of the firm's alcohol beverage product. Further, our staffs' review of the literature regarding the quantitative effect of alcohol advertising on consumption and abuse found no reliable basis to conclude that alcohol advertising significantly affects consumption, let alone abuse.

In examining the important issues raised by the petition, we also have considered what actions were being undertaken by the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury (BATF), which has concurrent jurisdiction with the Commission over alcohol advertising. Since 1978, BATF has been actively engaged in rulemaking proceedings considering many of the issues raised by the petition. Currently, BATF plans additional rulemakings to consider the appropriateness of using athletes, other celebrities and athletic events in alcohol advertising, and to consider incorporation of the alcohol beverage industry's advertising codes into BATF's regulations. To the extent that any Commission activity might parallel that of BATF, unnecessary and costly duplication and inconsistent regulation might result.

We recognize the enormous personal tragedy and physical and economic injury connected with alcohol beverage abuse in our society. Our staffs' inquiry into the effect of public information campaigns persuades us that there are ways, other than by the regulatory methods referred to in the petition, in which the Commission might constructively help address the serious issue of alcohol abuse. Our staffs' review of the public information efforts that have been undertaken by many different groups over the years indicates that such efforts, in conjunction with other measures, such as more stringent legal sanctions, may be beneficial. Thus, the Commission might use its expertise to assist in a comprehensive interagency analysis and evaluation of the existing structure of public information campaigns. Identifying the types of campaigns that are most beneficial so that available resources could be focused on such campaigns might prove to be a cost-effective means of reducing alcohol abuse.

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[1] Many of the alleged industry-wide practices challenged by the petition would seem to require analysis solely under the Commission's unfairness standard. The Commission, however, currently does not have authority to issue rules governing commercial advertising on the basis of its unfairness jurisdiction.

In conclusion, we concur in our staffs' analysis and in their recommendation that the Commission deny the petition. Of course, in recommending that the petition be denied, we do not intend to suggest that the Commission should not pursue case-by-case law enforcement initiatives regarding alcohol advertising or marketing practices, where they are warranted. We also wholeheartedly recommend that the Commission participate in non-regulatory efforts such as the one described above that might address the issue of alcohol abuse.

MEMORANDUM

DATE: March 6, 1985

TO: Commission

FROM: Bruce C. Levine and Donald G. D'Amato, Staff Attorneys, Edward T. Popper, Marketing Consultant, Division of Advertising Practices, and Donald Keenan, Economist, Bureau of Economics

SUBJECT: Omnibus Petition For Regulation Of Unfair And Deceptive Alcoholic Beverage Advertising And Marketing Practices (Docket No. 209-46)

RECOMMENDATION: That the Commission deny the above-referenced petition.

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APPENDIX A: Alcohol Advertising, Consumption And Abuse (A Review of the Literature)

A. INTRODUCTION

This memorandum analyzes the issues raised by the "Omnibus Petition For Regulation of Unfair and Deceptive Alcoholic Beverage Advertising and Marketing Practices" that was filed by the Center for Science in the Public Interest (CSPI) and others. After extensively analyzing the relevant research, the staff believes that little, if any, evidence exists indicating that alcohol advertising or marketing practices deceptively or unfairly result in alcohol abuse or even increased consumption. Further, the Bureau of Alcohol, Tobacco and Firearms (BATF) is currently engaging in rulemaking proceedings considering many of the issues raised in the petition to the Commission. For these reasons, the staff believes that further inquiry into the petition's allegations of industry-wide violations is unwarranted.

B. THE PETITION

Twenty-nine organizations and three individuals led by CSPI have filed a petition seeking Commission regulation of alcoholic beverage advertising and marketing. The petition contends that many of the marketing and advertising practices of the alcoholic beverage industry have contributed to the indisputably enormous personal and economic injury connected with alcohol abuse. According to the petition, the abuse of alcoholic beverages has contributed to at least one-third of all traffic fatalities, industrial accidents, drownings, burnings and falls, and over one-half of all violent crimes. Additionally, the petition states that alcohol abuse contributes to many health problems, including fetal injuries. The petition concludes that the estimated costs to society of alcohol abuse, according to numerous studies, are as high as $120 billion per year.

Specifically, the petition requests that the Commission:

1. Commence a comprehensive, industry-wide investigation of alcoholic beverage advertising, promotional and marketing practices. This investigation should explore and determine the extent to which these practices encourage the consumption of alcohol and the extent to which these practices may be encouraging certain vulnerable groups to use or abuse alcohol.
2. Commence one or more rulemakings to consider proper remedies for any law violations prevalent in the advertising and marketing of alcoholic beverages. In this regard, the petitioners specifically recommend both bans and informational remedies. The bans the petitioners propose are prohibitions on all advertising, promotional and marketing practices that:

a. Are aimed at or reach large numbers of youth or heavy drinkers;

b. Use athletic, show business or music celebrities;

c. Depict alcohol use in connection with risky activities;

d. Use subliminal techniques;

e. Link consumption to success;

f. Encourage excessive consumption; and

g. Discourage treatment of alcohol abuse.

The informational remedies proposed are:

a. Public service announcements designed to discourage inappropriate drinking habits;

b. Rotational warnings in print advertising.

3. Commence case-by-case enforcement activities against those acts or practices that would violate the proposed bans; and

4. Prepare an annual report to Congress concerning the consumption and marketing of alcohol beverages.

In requesting the above Commission actions, the petition argues that numerous advertising and promotional techniques currently used to market alcoholic beverages unfairly undermine both voluntary and governmental efforts to provide consumer information on the health hazards and other adverse consequences associated with alcoholic beverage use and abuse. The petition also contends that much of the industry's advertising and promotion is deceptive because alcoholic beverage consumption is presented in a positive manner, and therefore encourages abusive consumption.

C. The Legal Framework For Analysis

The Commission has the statutory authority to regulate unfair or deceptive advertisements of alcoholic beverages in or affecting commerce under Section 5 of the FTC Act. 15 U.S.C. §§ 45 *et seq.* Both prongs of the Commission's authority under Section 5 -- unfairness and deception -- have been the subject of recent policy statements that define these grants of authority and provide guidance about their use. The Commission's enforcement authority is, of course, bounded by the protections afforded to commercial speech by the First Amendment of the United States Constitution.

1. Deception

According to the recent Commission articulation of its deception authority, the Commission will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.[1] If the representation or practice affects or is directed primarily to a particular group, the Commission examines reasonableness from the perspective of that group.[2] In cases of implied claims, the Commission will often be able to determine the representation's meaning through an examination of the representation itself.[3] In some situations, however, the Commission will require extrinsic evidence to resolve the meaning of the implied claim to the targeted audience.[4] In all instances, the Commission will carefully consider any extrinsic evidence brought to its attention.[5]

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[1] Commission Enforcement Policy On Deception, Commission letter to the Honorable John D. Dingell, October 14, 1983.

[2] As the Commission noted in Heinz W. Kirchner, 63 F.T.C. 1282, 1290 (1963):

> "[a] representation does not become 'false and deceptive' merely because it will be unreasonably misunderstood by an insignificant and unrepresentative segment of the class of persons to whom the representation is addressed. If, however, advertising is aimed at a specially susceptible group of people (*e.g.*, children), its truthfulness must be measured by the impact it will make on them, not others to whom it is not primarily directed."

[3] National Dynamics, 82 F.T.C. 488, 548 (1972), aff'd, 492 F.2d 1333 (2d Cir.), cert. denied, 419 U.S. 993 (1974).

Lastly, the representation, omission or practice must be "material" — that is, likely to affect the consumer's conduct or decision with regard to a product or service. If the practice is material, consumer injury is likely because consumers are likely to have chosen differently but for the deception. In many instances, materiality, and hence injury, can be presumed from the nature of the practice. For example, the Commission presumes that all express claims are material. Similarly, when evidence exists that a seller intended to make an implied claim, the Commission will infer materiality.[6] Where materiality cannot be presumed from the nature or context of the claim, the Commission may require evidence to establish that the challenged claims are likely to affect consumer behavior.[7]

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[4] *See, e.g., Pfizer, Inc.*, 81 F.T.C. 23, 59 (1972); *Sears, Roebuck & Co.*, 95 F.T.C. 406, 510-11 (1980).

[5] *Thompson Medical Company*, FTC Docket No. 9149 (November 23, 1984), pp. 16-17.

[6] The Commission, however, will always consider relevant and competent evidence offered to rebut presumptions of materiality.

[7] Commission Enforcement Policy On Deception, at 16-18.

The advertisements and practices challenged by petitioners do not expressly encourage alcohol abuse. Nor are any such implied claims obvious from an examination of the challenged practices. These advertisements and practices ostensibly appear as image promotion signaling the availability and quality of the firm's alcoholic beverage product. The positive promotion of these lawful products, however, does not establish a deceptive practice under the Commission's statutory framework. In this context, a finding of deception would seem to require extrinsic evidence that the challenged practices misrepresent by implication the attributes of alcoholic beverages or the consequences of consumption (moderate and/or abusive). Further, the materiality of such misrepresentation must be established: Is the misrepresentation likely to lead to abusive consumption?

2. Unfairness

While the theory of deception addresses misleading practices by sellers, unfairness is a broader concept that is used to reach acts or practices that do not necessarily involve misleading representations, but nevertheless produce unavoidable substantial injury to consumers.[8] For example, the market may fail to provide information that would enable consumers to avoid substantial injury. When the benefits of providing such information exceed its costs, the Commission is empowered to act to ensure its availability.

The Commission, in 1980, provided specific guidelines to the public and staff in the form of requirements that the agency must meet before finding a practice to be unfair. Specifically, the Commission requires reliable evidence that: (1) the injury produced by the practice is substantial; (2) the injury produced by the practice is not outweighed by countervailing benefits to consumers or competition that the practice produces; and (3) the injury is one that consumers could not reasonably have avoided.

The Commission's unfairness authority does not extend to trivial or speculative harm. An injury may be sufficiently substantial, however, if it does a small harm to a large number of people, or a great injury to a small number of people. In addition, the Commission may halt a practice once it poses a substantial risk of harm even though the harm has not yet materialized.

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[8] Commission Statement of Policy on the Scope of the Consumer Unfairness Jurisdiction, Commission letter to Senators Danforth and Ford, December 17, 1980. See also, Credit Practices Rule, Statement of Basis and Purpose and Regulatory Analysis, 49 F.R. 7740, 7742-43 (1984).

The Commission does not currently have authority to issue rules governing commercial advertising on the basis of a determination by the Commission that such advertising constitutes an unfair act or practice.[9] Thus, one valuable tool for examining many of the issues raised by the Petition and providing appropriate remedies is currently unavailable. It should be noted, however, that Public Law No. 98-166 arguably permits rulemaking governing marketing practices, other than advertising, based on unfairness. In practice, however, product promotion involves a mix of activities, and the line that separates "commercial advertising" from other forms of promotion is unclear. For example, in this case, the petition complains of certain "marketing techniques," such as alcoholic beverage industry sponsorship of rock concerts, campus sweepstakes, beer-drinking contests and poster distributions. In a rulemaking to examine any of these practices on the basis of its unfairness authority, the Commission would risk running afoul of the intent of Congress. Moreover, even if the commercial advertising aspects of these promotions were capable of being neatly distinguished, a rulemaking to consider certain aspects of these promotions wholly divorced from their commercial advertising aspects would appear to be an awkward and inefficient undertaking.

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[9] Public Law No. 98-166 restricts the Commission's authority in this respect.

Protection of the principles of consumer sovereignty[10] rests at the heart of the Commission's exercise of its unfairness authority.[11] In the context of alcoholic beverage advertising, these principles will not support a finding of substantial injury solely in the promotion of this lawfully marketed product. To hold otherwise would permit the Commission to substitute its own tastes for that of the marketplace. Thus, a finding that the challenged practices are unfair would require evidence that the practices are likely to lead to abuse. It is abuse, not consumption _per se_, that leads to unavoidable consumer injury.

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[10] "Consumer sovereignty" may be defined as the free exercise of individual purchase decisions in a competitive marketplace.

[11] _See_, _e.g._, Averett, _The Meaning of "Unfair Acts or Practices" In Section 5 Of the Federal Trade Commission Act_, 70 Geo. L.J. 225 (1981).

3. The First And Twenty-First Amendments

The Commission's authority to regulate acts or practices in or affecting commerce under either a deception or unfairness theory is, of course, affected by the First Amendment. Because of the informational function of advertising, commercial speech is protected by the First Amendment. See, First National Bank of Boston v. Bellotti, 435 U.S. 765, 783 (1978). While the government may ban forms of communication more likely to deceive the public than to inform it,[12] or commercial speech related to illegal activity,[13] if the communication is neither misleading nor related to unlawful activity, the government's power is more circumscribed. In these instances, in order to justify regulation, the government must determine that the regulation: (1) serves a substantial government interest; (2) directly advances that interest; and (3) is no more extensive than necessary to serve that interest. Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557, 566 (1980).

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[12] See, Friedman v. Rogers, 448 U.S. 1, 13, 15-16 (1979).

[13] See, Pittsburgh Press Co. v. Human Relations Commission, 413 U.S. 376, 388-89 (1973).

The 10th and 5th Circuit Courts of Appeals have recently evaluated the constitutionality of partial statewide bans on alcoholic beverage advertising under the *Central Hudson* test described above.[14] Both courts failed to resolve the issue of what evidence is necessary for *federal* agencies to support findings of fact under that test. The courts essentially conclude that because of the 21st Amendment, granting states special authority to regulate alcohol, state decisions imposing partial bans on alcohol advertising are entitled to great deference, and by implication, greater deference than might be accorded to similar federal actions.[15]

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[14] *Oklahoma Telecasters Assoc. v. Crisp*, 699 F.2d 490 (10th Cir. 1983), *rev'd sub nom.*, *Capital City Cables, Inc. v. Crisp*, 52 U.S.L.W. 4803 (1984); *Dunagin v. City of Oxford, Mississippi*, 718 F.2d 738 (5th Cir. 1983), *cert. denied*, 52 U.S.L.W. 3920 (1984).

For example, in Oklahoma Telecasters Assoc. v. Crisp, the 10th Circuit upheld a ban that included, among other restrictions, a requirement that Oklahoma cable operators delete wine advertisements from out-of-state signals transmitted over their systems.[16] That court noted that the record did not demonstrate that Oklahoma's advertising restrictions have any direct effect on the consumption of alcohol. Nonetheless, the court found the Central Hudson test did not require such evidence in the case before it "in light of the additional deference owed to the legislature as a result of the Twenty-first Amendment." 699 F.2d at 501. The Oklahoma Telecasters court emphasized:

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[15] The relevant section of the Twenty-First Amendment states:

> "The transportation or importation into any State, Territory or possession of the United States for delivery or use therein of intoxicating liquors in violation of the laws thereof, is hereby prohibited". U.S. Const. amend. XXI, §2.

While the states have broad authority to regulate alcoholic beverages under their traditional police powers standing alone, Wisconsin v. Constantineau, 400 U.S. 433, 436 (1971), the broad sweep of the Twenty-first Amendment has been recognized as conferring something more than normal state authority over public health, welfare and morals. California v. LaRue, 409 U.S. 109, 114 (1972).

Forty-nine states and the District of Columbia have regulations specifically governing the advertising and promotion of beverage alcohol. These regulations are in addition to those enforced by BATF. They generally govern, among other things, the nature and content of advertisements in newspapers and magazines and on billboards, the types and placement of advertising signs and promotional materials by retail licensees, and the types of promotional activities in which manufacturers, wholesalers and retailers may engage. Most incorporate the provisions of the BATF regulations, and many contain additional provisions.

> [T]he Central Hudson test is essentially a balancing test. When the Twenty-first Amendment is considered in addition to Oklahoma's substantial interest under its police power, the balance shifts in the state's favor, permitting regulation of commercial speech that might not otherwise be permissible. (699 F.2d at 502).[17]

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[16] The Constitution of Oklahoma bars advertising of alcoholic beverages with more than 3.2% alcohol. Because beer can contain 3.2% alcohol, beer advertising has been allowed, but advertising of wine and other alcoholic beverages is prohibited, except for on-premises signs. Print media within the state cannot carry alcohol ads (though publications originating outside the state can do so) and TV broadcasters have had to "block out" wine commercials in their network feeds. Cable TV operators were not required to do this until 1980, when the state's attorney general ruled that cable companies also fell under the purview of the law.

[17] The Supreme Court reversed the 10th Circuit on the narrow ground that the application of Oklahoma's alcoholic beverage advertising ban to out-of-state signals carried by cable operators in that state is pre-empted by the comprehensive federal regulatory scheme governing signal carriage by cable television systems. In weighing the conflicting federal and state interests at issue, the Supreme Court nevertheless accepted Oklahoma's judgment "that restrictions on liquor advertising represent a reasonable, albeit limited, means of furthering temperence." The Court expressly declined to consider the question whether Oklahoma's advertising ban constitutes an invalid restriction on protected free speech. 52 U.S.L.W. at 4810.

In Dunagin v. City of Oxford, Mississippi, the 5th Circuit upheld Mississippi's regulations prohibiting most alcoholic beverage advertisements. The Court pointed out that the Supreme Court cases reviewing state regulation of alcoholic beverages under the Twenty-first Amendment:

> ....employ a presumption in favor of validity, while ordinarily the burden is on the party defending a restriction on speech, even in a commercial speech case....It may follow that because any restriction on the advertisement of liquor itself is necessarily related, rationally and directly to liquor regulation, restrictions placed upon that advertisement by the states are consistent with the First Amendment. (718 F.2d at 745).

Thus, in Dunagin, although one of the trial courts below had found that "[d]efendants failed to produce concrete scientific evidence to substantiate their position that alcohol advertising artificially stimulates consumption thereof", as opposed to affecting only brand loyalty and market share, the appellate court held that the challenged regulation met the Central Hudson test, "since the added presumption in favor of validity...helps to establish the balance in favor of the state, if balancing is necessary." 728 F.2d at 748, 750.

D. The Evidentiary Issues Presented In Evaluating The Challenged Practices

1. The Issue of Materiality and Injury

As the preceding discussion of the Commission's deception and unfairness authority indicates, in the context of current alcoholic beverage advertising, there is a common evidentiary element necessary to support any of the petition's proposed industry-wide remedies. That element is that alcoholic beverage advertising is likely to lead consumers to abuse alcoholic beverages, not merely consume them.[18] The petition recognizes that the technical evidence does not demonstrate that alcohol advertising is likely to lead to increased consumption, much less abuse.[19]

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[18] Of course, express misrepresentations, i.e., drinking improves your driving, or implied misrepresentations involving health, safety, or other areas in which the reasonable consumer would be concerned, would be actionable on a case-by-case basis under the Commission's deception authority without further evidence of materiality.

Appendix A, "Alcohol Advertising, Consumption, and Abuse," offers a detailed survey of econometric literature bearing on the effects of advertising on industry sales. Three main types of studies are considered: multi-industry studies, which examine the effect of advertising on industry sales in general; studies of the cigarette industry; and lastly, studies concentrating on alcohol. A number of the multi-industry studies also include alcoholic beverages among the products considered.

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[19] In an attempt to dismiss the need for any reliable evidence in support of their regulatory proposals, the petition suggests that reliable evidence may be impossible to achieve, and therefore should not be required in support of any Commission remedy for the alleged ills associated with the challenged advertising and marketing practices. The petition's attempts to justify the imposition of regulatory remedies without supporting evidence is unpersuasive. While the assessment of the appropriate amount of evidence to support Commission action must recognize the consequences of failing to act, the Commission currently lacks the evidence necessary to make an assessment that the challenged marketing activities deceptively or unfairly lead to alcoholic beverage abuse. Further, the Commission lacks any evidence as to the relative effectiveness of the range of possible remedies in reducing any perceived injury; nor is there any data examining the possible unintended consequences of any of these remedies in restricting the flow of useful information about lawfully marketed alcoholic beverage products.

Most of the general industry studies have found little effect from advertising on industry sales for goods in general. Not all studies support this conclusion and the literature as a whole suffers from considerable methodological difficulties. Nonetheless, the preponderance of the evidence indicates that the industry-wide effect of marginal changes in advertising is likely to be quite small for most goods.

When it comes to the cigarette industry in particular, studies again find that advertising has little impact on industry's sales. The cigarette industry is a particularly interesting case study because the 1971 ban on broadcast advertisements significantly affected cigarette advertising. The situation, however, was complicated by the presence of the Fairness Doctrine, which required anti-smoking messages to be aired in proportion to the number of cigarette advertisements aired. The ban on broadcast cigarette advertisements also ended the required anti-smoking messages. These simultaneous occurrences severely hamper researchers' ability to obtain reliable results.

The role of advertising has been studied for the alcohol industry in its entirety and for such components as distilled spirits, beer and wine. While there are exceptions, the better part of the studies indicate advertising has no major impact on the alcohol industry in general or on its various components. Few of these studies, though, have addressed the issue of alcohol abuse.

One study that relies on self reported behavior is that of Atkin & Block (1980). This is the main piece of scientific literature cited in the petition. It and the other works cited in the petition are treated in a separate section of Appendix A. The general conclusion is that the work of Atkin & Block suffers from methodological flaws serious enough that it cannot be used to draw any conclusions concerning the effect of advertising on the total demand for alcohol or on the degree of alcohol abuse.

2. Need for Future Studies

Since the prevailing literature has not even resolved the issue of whether advertising increases total demand for alcohol, not to mention whether it contributes to alcohol abuse, the question arises whether further study should be undertaken. The petition specifically requests that the Federal Trade Commission do so. Most of the studies done so far seem to be the conscientious efforts of competent researchers, so the fact that they have not reached definitive or even consistent results does not bode well for future studies.

The chain of reasoning adopted by most researchers has been from advertising to consumption and then from consumption to abuse. The first link, that between advertising and consumption, is the one more amenable to statistical analysis and it is here that most of the empirical studies have concentrated. This topic is not without methodological difficulties of its own, however.

Most prominent is the severe simultaneity problem that exists between advertising and the level of consumption or sales. The difficulty lies in separating the problematical effect of advertising on sales from the much more powerful effect of sales on advertising that results when firms follow a policy of keeping a constant advertising/sales ratio. Statistical techniques exist, however, to mitigate this problem.

Another serious problem is that most studies estimate only the marginal effects of changes in advertising expenditures rather than the total effect that would be the consequence of a ban. Economic theory suggests that the impact of advertising on industry sales should be subject to diminishing returns. Usual methods of statistical analysis will only uncover the effect on sales of small changes in the total amount of advertising, starting from the actually observed level of advertising. This effect is likely to be significantly smaller than a similar change starting from the level of, say, no advertising. Thus the marginal impact of advertising obtained by the usual sort of statistical technique is likely to understate the total effect. While there have been studies that specifically consider bans, none of these have resulted in a consensus as to the significance of advertising restrictions. When the substantial work already done and the meager achievements gained in the face of severe methodological problems are considered, it is problematical whether further studies are warranted. It seems unlikely that a more striking result will be achieved than the standard one that the effect of advertising on sales is found to be small or more often statistically insignificant.

When it comes to the issue of advertising and abuse, the literature is much more sparse. Reasons are not hard to find. The ability to even measure or detect rates of alcohol abuse in a meaningful way is open to question. There is a consensus that whatever the economic determinants of alcohol abuse, there is also a wide range of other social and personal variables that would need to be accounted for in any careful statistical analysis. One would need populations, for example, in different states, that were similar in all these regards, but were exposed to significantly different levels of advertising, say, through the presence or absence of state bans on alcohol advertising. However, whether a state bars alcohol advertising or not is decided politically by the members of that state, making it unlikely that the populations of the two states could be sufficiently similar. This is all to say that any studies of alcohol abuse due to advertising are liable to be plagued by problems of measurement, omitted variables, and sample-selection bias.

3. The Issue of Remedies

In assessing the costs and benefits of any industry-wide regulatory action, the Commission also must measure the relative cost and effectiveness of any proposed remedies, as well as examine the unintended consequences of any of these remedies in restricting the flow of useful commercial information. To this end, when a ban is being considered, the Commission must: (1) measure the extent to which the ban has the intended results; and (2) measure the cost to consumers of being deprived of any useful product information as a function of the ban. In this regard, any advertising restrictions intended to limit alcohol abuse may be a blunt and inaccurate instrument. We have seen that the possible gains of such a restriction in terms of reduced abuse are difficult to assess; the costs of a ban to the vast majority of moderate drinkers, although difficult to quantify, appear more certain. Alcoholic beverage advertising, like advertising for other products, clearly assists consumers in identifying those types and brands that they prefer. Moreover, as discussed more fully in Appendix A, there may be a number of other beneficial effects to alcoholic beverage advertising that would be eliminated by a ban. For example, to the extent that advertising promotes new brand entry, advertising restrictions will deter the development of new brands. Thus, it might be more difficult for new types of low-calorie or low-alcohol drinks to develop a market. Knowing this, producers may be less likely to introduce such brands.

In sum, reliable evidence establishing that the challenged advertising and marketing practices are likely to lead to abuse, as well as evidence regarding the effects of any potential remedies, is a necessary predicate to Commission regulation in this area. While it may be possible to gather more reliable evidence on these issues, it is likely to be a complex and lengthy undertaking, calling for a major coordinated interdisciplinary effort involving experts in medicine, alcoholism, econometrics, marketing and consumer behavior.

E. The Bureau of Alcohol, Tobacco, And Firearms And Its Advertising Rulemakings

In examining the issue of alcohol advertising, the role of other federal agencies must be considered. Along with the Commission, BATF has concurrent jurisdiction over alcoholic beverage advertising under the Federal Alcohol Administration Act of 1935 (FAA Act), 27 U.S.C. §§ 201 et seq. Section 5(f) of the FAA Act, 27 U.S.C. § 205(f), prohibits "false", "misleading", "obscene", or "indecent" statements in distilled spirits, wine, or malt beverage advertisements. Even more broadly, Section 5(f) prohibits any statements relating to "irrelevant" matters, "irrespective of falsity", which the Secretary of the Treasury finds to be likely to mislead the consumer. Additionally, Section 5(f) confers the authority to require mandatory information "as will provide the consumer with adequate information as to the identity and quality of the products advertised."

The petition argues that BATF lacks the FTC's unfairness authority to deal with the sort of practices that are the subject of the petition's requests. Although the statutory language of the FAA Act differs from that of the FTC Act, the authority it confers on the BATF over alcoholic beverage advertising is extremely broad. The petition also contends that BATF's jurisdiction over beer advertising is limited. Under Section § 205(f), BATF's jurisdiction in regulating malt beverage advertising is specifically restricted to states where the law of such states imposes similar requirements. BATF's General Counsel's Office, however, takes the position that it can proceed under its statute against malt beverage advertising in any state that has laws (such as "little" FTC acts) that prohibit deceptive or unfair advertising generally, even though the state law does not specifically deal with beer. Lastly, the petitioners argue that BATF's authority does not extend to trade practices other than labeling and advertising. BATF takes the position that its "advertising" authority can be used to reach all of the promotional practices challenged by petitioners.

In the mid-1930's, BATF promulgated regulations under Section §205(f).[20] These regulations have remained basically unchanged until recently. In brief, these regulations require certain limited disclosures concerning ingredients, identity and alcoholic content, and list specific definitions for uniform usage of certain trade terms in any advertising statement relating to wine, distilled spirit or malt beverage products. In very broad terms, the regulations also generally prohibit false, misleading, obscene or indecent representations.

BATF has an ongoing compliance operation that enforces its current advertising regulations. According to Bruce Weininger, Chief, Industry Compliance Division, and Rick Allen, Chief, Product Compliance Branch, BATF has 15 professionals and 3 clericals that provide voluntary ad preclearance and ad monitoring for compliance with the FAA Act and the BATF's regulations. The staff reviews 300-400 alcoholic beverage ads a month through its clipping service and provides optional preclearance advice on 40-50 major alcoholic beverage advertising campaigns. This staff also reviews over 6,000 alcoholic beverage labels a month. The bulk of the staff's efforts appears directed at ensuring compliance with BATF's specific disclosure and trade term usage requirements. The staff, however, also reviews campaigns to ensure that the images (e.g., use of active athletes, operation of automobiles) portrayed are not "false" or "misleading."[21]

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[20] 27 C.F.R. Part 4, Subpart G; Part 5, Subpart H; and Part 7, Subpart F.

In 1978, BATF issued an Advance Notice of Proposed Rulemaking seeking comments on updating and revising its alcoholic beverage advertising regulations. The scope of the Advance Notice is comprehensive and encompasses many of the issues raised in the CSPI petition now before the FTC. In the Advance Notice, the BATF noted that the advertising provisions of its regulations may be in need of revision due to changes in advertising techniques and practices, and changes in consumer education and awareness. Specifically, the Advance Notice stated:

> "There is need to take a new look at advertising practices due to the evolution and refinement of advertising techniques over the past 40 years. For example, the question

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[21] The major administrative remedy provided by the FAA Act is license suspension or revocation. See, 27 U.S.C. § 204. Since BATF has licensing authority over all levels of the alcoholic beverage distribution chain, except retailers and malt beverage brewers, licensing authority provides a potent enforcement tool. Additionally, the FAA Act provides for civil and criminal sanctions. See, 27 U.S.C. § 207.

> of whether advertisements are directed toward certain population groups (i.e., youth) needs to be examined in the context of [BATF's] statutory mandate."

Some other issues specifically raised in the Advance Notice include:

> 1. How should the prohibition against any statement, design, device or representation which is obscene or indecent be implemented?
> 2. Is advertising based on sex appeal within the scope of the standard set forth in the statute, that is, obscene or indecent?
> 3. Should the use of active athletes in alcoholic beverage advertising be prohibited? Does the use of active athletes in this form of advertising imply a connection between the ability and prowess of the athlete and his use of the product?

The Advance Notice concluded by seeking comment on any "other current advertising practices which should be covered as to their allowance or prohibition." The BATF, in the Advance Notice, plainly suggested an expansive view of its jurisdiction over alcoholic beverage advertising.

In response to the 1978 Advance Notice, the BATF received 4,810 comments and 140 petitions containing over 4,000 signatures. Comments were submitted by the general public, members of the alcoholic beverage industry and trade associations, members of the advertising industry and media, attorneys, Federal governmental agencies, State and local agencies, educational institutions and other interested organizations, including CSPI. Many of the arguments made, and remedies proposed by CSPI, in response to the 1978 Advance Notice, are similar to those contained in its petition currently pending before the FTC. The overwhelming majority of comments received expressed personal opinions and religious beliefs concerning alcoholic beverages and did not specifically address the advertising issues raised in the Advance Notice. Of the 89 comments addressing the issues concerning advertising practices, 26 argued that advertising should not be youth-oriented, 16 argued that advertisements should not be success-oriented or depict consumption as being socially acceptable, 10 urged the prohibition of advertisements that imply excessive consumption, 4 contended that advertisements should not depict the operation of machinery, and 12 argued that advertising in youth magazines, or advertisements shown on television during prime-time should be banned. A large number of comments also sought mandatory warning labels and health hazard disclosures in advertising. Others urged mandatory industry public service announcements and a ban on subliminal techniques and practices.

The record compiled at the Advance Notice stage of the BATF proceeding contained almost no empirically-based expert testimony or research evidence to support these regulatory proposals. In December 1980, after analysis of the Advance Notice record, the BATF issued a Notice of Proposed Rulemaking concerning revision of its advertising regulations. The specific proposals set forth in this Notice were limited to a relatively narrow set of concerns. The Notice proposed certain standards for permissible use of the terms "light", "natural", "pure", "double distilled", and "triple distilled" in advertising. The Notice also specifically addressed the issues of curative and therapeutic claims, taste test claims, comparative advertising and disparaging claims. Additionally, the Notice proposed to ban subliminal advertising and to prohibit active athletes from appearing in advertisements for alcoholic beverages.

In July 1984, the BATF finalized certain of the proposed rules set forth in its 1980 Notice. The BATF affirmed a policy in favor of non-misleading product advertising be it in terms of comparative claims, curative or therapeutic claims, claims that a product is "pure" or "double distilled" or "triple distilled", or representations concerning the results of taste tests. The BATF also finalized a proposed rule banning the use of subliminal techniques in alcoholic beverage advertising.

The BATF plans to continue actively considering the broad issues raised by the 1978 Advance Notice. BATF has publicly stated that it will consider the use of athletes, other celebrities and athletic events in advertising in a forthcoming rulemaking. Another rulemaking will consider the incorporation of various industry code provisions (Wine Institute, U.S. Brewers Association, and Distilled Spirits Council of the United States) into its regulations.[22] In a speech to the National Association of Beer Wholesalers (NABW) on October 23, 1984, Tom George, Chief, Regulations and Procedures Division, BATF, said that he anticipated publication of these notices shortly.[23] In meetings with FTC staff, BATF staff have expressed concern that the Commission not undertake any activities in the area of alcoholic beverage advertising that may be potentially inconsistent with the outcome of the BATF's proposed rulemakings.

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[22] For a discussion of these codes, see, pp. 34-38, infra.

[23] In the interim, BATF has urged the industry itself to take a more serious look at the relationship between its advertising and marketing practices and alcohol abuse. "Feds Rap Beer Promo Tactics", Advertising Age, November 1, 1984, at 2.

F. The Major Trade Groups And Industry Self-Regulation

In addition to governmental regulation of alcohol advertising, there are a number of trade associations representing various parts of the spirits, wine, and beer industry that have advertising codes setting forth ethical standards of conduct for their respective members. The most widely known code restrictions are the prohibition on distilled spirits ads on television or radio and the taboo on the actual drinking of alcohol in commercials. Some of the codes also discourage appeals to children, the use of sexuality, the exploitation of women, and the use of bad taste. For example, *The Code Of Good Practice*, adopted in 1975 by Distilled Spirits Council of the United States (DISCUS) contains statements like, "all advertisements of distilled spirits shall be modest, dignified and in good taste."[24]

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[24] DISCUS is an association of the U.S. Distillers who produce over 95% of the distilled spirits made in the United States. The distilled spirit industry is represented at the wholesale level by the American Beverage Alcohol Association.

Further, DISCUS has established a code review board consisting of five members that considers complaints lodged by its members or other interested parties. The findings of the board are communicated to the responsible advertiser and, if appropriate, to all members of the Board of Directors of DISCUS.

The Guidelines For Beer Advertising, first adopted in 1975 by the United States Brewers Association (U.S.B.A.), and recently revised, discourage ads that contain appeals for overindulgence, links to dangerous or criminal activities, depictions of loss of self-control, even slightly lewd or obscene material, the use of young models, and the depiction of unkempt taverns.[25]

In addition, the U.S.B.A. formulated an advertising review panel comprised of impartial experts on public opinion, none of whom is associated with the brewing industry. The objectives of the panel are to provide a means of industry self-regulation, to avoid advertising that might injure the industry, and to seek withdrawal of undesirable advertising. Any brewer may file a complaint or criticism with the panel. The complaint is then considered by the panel and if upheld, brought to the attention of the responsible brewer.

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[25] The United States Brewers Association represents the beer industry at the producer's level. Its membership includes the producers of 2/3 of all the beer bottled in the United States. Miller, however, the nation's second largest brewer, is not a member of this association.

The Wine Institute's Code Of Advertising Standards, adopted in 1978, disallows ads that suggest excessive drinking and the use of wine in conjunction with dangerous activities and driving.[26] The code discourages: "any attempt to suggest that wine directly contributes to success or achievement....Wine shall not be presented as being essential to personal performance, social attainment, achievement, success or wealth." The use of wine for personal problem solving, social acceptance, or entertainment is also prohibited. More specifically, the Code generally requires that the use of wine be depicted in association with a meal-type setting. The Wine Institute additionally bars strategies that appeal to youth, i.e., young models, youth music, and celebrities, as well as placing ads in "youth-oriented media."

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[26] The Wine Institute represents 95% of all California wineries accounting for 70% of the national wine market; the balance of the United States wineries is represented by the Association of American Vintners.

The trade association codes are necessarily voluntary; the association members, however, must agree to abide by the guidelines of the codes as a condition for membership in the respective associations. Although voluntary, these codes as well as the review panels help industry to avoid practices that might be misleading, or that otherwise might be objectionable.

The trade associations, along with FTC and BATF staff and other organizations, also are actively participating in a program sponsored by the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice (OJJDP) to develop other voluntary approaches to the problem. This program seeks to bring together concerned citizens groups, government organizations, the media, advertising, entertainment, and the alcoholic beverage industries to formulate a consensus on how society can better address drug and alcohol abuse among youth and adults. A large part of the joint undertaking currently centers on the Media Task Force. This task force plans to collect and evaluate existing research on both the effects of broadcast and print alcoholic beverage advertising and on the effects of broadcast PSAs and print campaigns conveying messages on the dangers associated with alcohol abuse and alcoholism. The task force also plans to review existing advertising and public information efforts and hopes to develop new public service approaches and campaigns.

Such undertakings as the OJJDP program provide an important opportunity to explore how self-regulatory mechanisms in the alcoholic beverage area can be improved to better ensure that advertisements do not contain themes or techniques that may affect youth or problem drinkers.

G. PUBLIC INFORMATION APPROACHES

1. Overview

Although we recommend that the petition be denied, we believe that there are other ways in which government activity may have an impact on reducing the problems associated with alcohol abuse: establishing minimum drinking ages and similar restrictions on consumption; greater and more certain civil and criminal sanctions for conduct likely to cause injury -- for example, driving while intoxicated; and facilitating public education, counseling and treatment programs. All of these other efforts can be supported and enhanced by properly structured public information campaigns.

As part of our inquiry into the issues raised by the petition, we looked not only at counteradvertising or affirmative disclosures as a remedy for deceptive or unfair advertising, but at affirmative information programs regarding health, treatment and the law. Our review indicates that a great deal of analysis is needed in this area. For example, in 1978, after reviewing, evaluating, and summarizing the existing knowledge regarding alcohol and highway safety in the United States, the National Highway Traffic Safety Administration (NHTSA) found that:

> The inadequacy of the designs for evaluation and of other features of campaign development has made it difficult to determine the exact nature and extent of the impact of most alcohol-highway safety media campaigns. Pre- and post-testing has been done for almost all campaigns, but very few of them have used control groups.[27]

The report concluded, however, that some evidence existed to support the conclusion that public information and education campaigns, in combination with stricter legal sanctions or improved health treatment programs, have contributed to positive changes in behavior. The impact of the public information and education campaigns, however, could not be isolated from the impact of the other countermeasures.[28]

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[27] Jones, Ralph K. and Joscelyn, Kent, B., Alcohol and Highway Safety 1978: A Review of the State of Knowledge (Summary Volume), U.S. Department of Transportation, National Highway Traffic Safety Administration, at p. 66.

What is clear is that since the early 1970s, public education efforts using mass communications have been considered an important part of national efforts to prevent or minimize alcohol-related problems. Numerous government, industry, and voluntary organizations have undertaken such campaigns. The following discussion of some of the activity in this area is intended to be representative, not exhaustive.

2. Federal Agency Programs

The National Institute on Alcohol Abuse and Alcoholism (NIAAA), the Department of Transportation and the Department of the Treasury are the federal agencies that primarily organize and disseminate public information campaigns.

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[28] *Id*. at 67.

The NIAAA, from early 1972 to 1975, for example, conducted a media campaign around the themes of responsible drinking and awareness of the symptoms, consequences, and treatability of alcoholism. All forms of media were used in the campaign, including radio, television, and print ads.

In 1980, NIAAA joined with BATF to educate the public -- and women of childbearing age in particular -- about the detrimental effects of alcohol on the developing fetus. Less extensive in scope than the earlier NIAAA campaign, this effort used a television public service spot and brochures, both to be distributed via State alcohol agencies. In addition to the public education campaigns, the effort also included mailings to health professionals. That same year NIAAA launched a nationwide public education effort focusing on women and youth -- both considered to be groups at risk for the development of alcohol problems and underserved by present health-care systems.

The BATF also produced a TV public service announcement aimed at the middle-class woman concerning Fetal Alcohol Syndrome (FAS). An illustrated booklet aimed at young people is also being distributed in three versions (English, Spanish, and English for American Indians). Thirteen states ordered the booklets for distribution through their retail liquor stores.

NHTSA, a part of the Department of Transportation (DOT), also engages in public awareness efforts. A national media effort that began in 1971 and continues today focuses on drinking and driving as a major social problem, with the theme that the problem drinker who drinks excessively and then drives is largely responsible for alcohol-related highway fatalities and injuries. In addition to its national media effort, NHTSA also initiated a program establishing local Alcohol Safety Action Projects (ASAPs) in communities in many states, combining public information and education components with other countermeasures such as law enforcement and driver education. Between 1970 and 1977, DOT committed $88-million to ASAPs across the nation.

In 1974, NHTSA adopted as its national campaign slogan, "Friends Don't Let Friends Drive Drunk". This slogan is designed to encourage people to intervene when they know they should, but may feel uncomfortable about doing so.

Other Federal agencies also are involved in information programs concerning alcohol abuse. The Department of Defense has developed a number of informational and educational campaigns designed to combat alcohol abuse on military bases. The Food and Drug Administration has produced several articles and a slide show for distribution and has featured FAS in an issue of its Drug Bulletin, which reaches more than a million health care providers. In addition, FDA consumer affairs officers in 35 major cities were provided information columns about FAS to be placed in small, local papers.

3. State And Local Government Programs

State and local governments have also become involved in public education programs. Many states have initiated FAS campaigns using their own materials or materials provided by the License Beverage Information Council (LBIC)[29], the National Council on Alcoholism, and other private organizations.

For example, the Pregnancy and Health Program of the University of Washington has produced several brochures and PSAs. The brochures, alerting women of childbearing age to a treatment and education program at the University, have been distributed in a variety of settings, including state liquor stores. Subsequent to distribution of the brochures, the University noted a significant increase in inquiries concerning the programs.

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[29] The LBIC is a consortium of ten major trade groups in the alcoholic beverage industry. The ten industry groups are: Association of American Vintners, Distilled Spirits Council of the United States, Inc., American Beverage Alcohol Association, National Association of Beverage Importers, Inc., National Beer Wholesalers' Association of America, National Licensed Beverage Association, National Liquor Stores Association, Inc., United States Brewers Association, Inc., Wine and Spirits Wholesalers of America, Inc., and the Wine Institute.

4. Private Sector Efforts

The private sector, via voluntary and industry agencies, has also participated in alcohol informational campaigns.

Of the voluntary agencies, the National Safety Council (NSC) has the longest history of involvement in alcohol-related public education. Its "If you drink, don't drive" campaign began shortly after World War II. A campaign on drinking and driving that began in 1970 also concentrated on the problem drinker's contribution to alcohol-related highway accidents and attempted to garner support for stricter law enforcement to get the problem drinker off the road. NSC continues to disseminate printed material on drinking and driving.

Several private organizations such as the American Automobile Association, the March of Dimes, the American Council on Alcoholism, and the National Council on Alcoholism have produced films, radio public service announcements, and brochures in English and Spanish.

The liquor industries in both the United States and Canada have been active in public education campaigns that stress moderate and responsible use of alcohol. For example, the U.S.B.A. and DISCUS are cooperating in safety programs on drinking and driving with NHTSA and the various states. The DISCUS "Know Your Limits" campaign offers specific guidelines on consumption effects and calls for "sensible drinking".

Besides the activities of the major trade associations, individual producers have sponsored their own campaigns. For instance, a moderation campaign conducted by the Seagram distillers began in 1934 with an ad encouraging the reader to "drink moderately." Subsequent ads have concerned such topics as drinking and driving, the dangers of mixing drugs and alcohol, the need for people with drinking problems to see their physicians, and the importance of moderation for young people.

The broadcasting industry is also involved in alcohol-related public educational campaigns. The National Association of Broadcasters (NAB) has promoted an industry-wide campaign to encourage its members and associates to disseminate information about alcohol use and abuse and highway safety. For example, the NAB has made a publication available to its members and associates entitled, "Drunk Driving: Broadcasters and Public Awareness." This booklet provides NAB members and associates with a compilation of organizations which may be contacted to aid broadcasters in communicating effective drunk driving PSAs to their audiences. Several state broadcaster associations are currently developing and disseminating PSAs.

5. The Need For Additional Examination

As the above discussion illustrates, the number of public awareness efforts undertaken to reduce the problem of alcohol abuse is impressive. Equally striking, however, is how little is known about the overall structure of the information being provided or the effectiveness of any given effort.

The many public awareness efforts undertaken by Federal agencies, state and local governments, as well as voluntary and industry organizations appear to be fragmented and uncoordinated. No single agency or office at the Federal level knows who in government and industry is disseminating what information, where, and to whom. Moreover, no inventory of information regarding the relative effectiveness of specific information campaigns exists. To the extent that information has been shared, it has been ad hoc and haphazard.

Thus, an analysis and evaluation of the existing structure of public informational campaigns in the area of alcohol abuse and alcoholism and of how this structure may be improved is needed. Such an undertaking is likely to require extensive resources and expertise well beyond those generally available to one agency, but may net great consumer benefits (by decreasing alcohol abuse).

H. Commission Options

The possible Commission responses to the issues presented by the CSPI petition fall into three general categories.

1. Institute Rulemaking Proposals To Deal With The Issues Raised By The Petitioners

A rulemaking approach is the most comprehensive Commission response. It confronts the Commission with the methodological problems associated with (1) assessing the behavioral effects of alcoholic beverage advertising and marketing practices, and (2) evaluating the relative effectiveness as well as the direct costs and indirect market consequences of the range of possible regulatory remedies.

This approach would require an unusually substantial and long-term program commitment. Since staff currently possesses little evidence to suggest the presence of the industry-wide law violations alleged in the petition, engaging in rulemaking proceedings may not be the most efficient expenditure of the Commission's resources. Moreover, to the extent a broad investigation might support a finding that certain industry-wide advertising practices are unfair, the Commission does not currently have authority to issue remedial rules. Additionally, any industry-wide approach may duplicate or be inconsistent with concurrent BATF rulemaking proceedings.

2. Take Individual Enforcement Actions Limited To Specific Advertising Campaigns That Deceptively Or Unfairly Encourage Alcohol Abuse.

This option would have the staff undertake individual enforcement investigations against specific advertising campaigns. In recommending that this petition be denied, the staff does not intend to foreclose the option of pursuing individual cases where warranted. As part of our review of the issues raised by the petition, the staff has reviewed numerous alcoholic beverage advertisements. While some of these advertisements may be distasteful, they do not appear to be likely investigatory targets. Of course, as part of the advertising monitoring program, the staff will continue to monitor and review alcohol advertisements.

3. Defer To BATF On The Issues Raised By The Petition

Since BATF is actively seeking comments and evidence on the impact of discrete alcoholic beverage advertising practices and techniques in its ongoing rulemaking activities, a parallel Commission examination of the same issues might involve costly duplication and, ultimately, potentially inconsistent regulation. This option entails Commission deference to the expertise of BATF regarding the issues presented in the petition.

To the extent that the BATF proceeds to consider the same alcoholic beverage advertising and marketing issues suggested by the petition, the Commission could make available its technical, economic, and other expertise should BATF determine that such expertise might be useful in developing and analyzing its rulemaking record. This input could probably most effectively be provided informally through a close working relationship with BATF.

I. Conclusion And Recommendations

Staff recommends that the petition be denied.

The alcoholic beverage advertising and marketing practices challenged by petitioners do not expressly urge individuals to become problem drinkers. And without extensive, and perhaps unobtainable evidence, the Commission cannot assume that all, or even some alcohol advertising has this effect. Further, the Commission in exercising its law enforcement mandate, is unlikely to be able to draw an adequate line between those alcoholic beverage advertisements that truthfully provide information that helps to sell this lawful product, and those ads that may contribute to the problems of alcohol misuse.

Additionally, as noted previously, BATF currently is engaged in rulemaking proceedings that may consider many of the same issues as those raised by the petition. Commission deference to BATF under these circumstances appears appropriate.

Ultimately, the Commission might make its most effective contribution to helping to reduce alcohol abuse by lending its expertise to a comprehensive interagency analysis of current and potential public information efforts to inform the public fully regarding health, treatment and the law.

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APPENDIX A

ALCOHOL ADVERTISING, CONSUMPTION, AND ABUSE

Bureau of Economics
Federal Trade Commission
March 5, 1985

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ALCOHOL ADVERTISING, CONSUMPTION, AND ABUSE

The principal purpose of this report is to survey and evaluate the existing empirical literature on the effect of advertising on alcohol consumption. Before undertaking that review, we consider the broader economic issues raised by possible restrictions on alcohol advertising. From this discussion it will be clear why the empirical literature does not address a number of crucial issues. In part this reflects the fact that the necessary data are not available.

I. AN ECONOMIC PERSPECTIVE ON ADVERTISING RESTRICTIONS

Evaluation of possible restrictions on advertising should take into consideration the benefits and costs of such restrictions and of alternative policies. These are discussed in the following sections.

A. Benefits of Advertising Restrictions

The potential benefit of alcohol advertising restrictions would be a reduction in alcohol abuse, particularly alcoholism and drunk driving, which have enormous personal and social costs. However, no theoretical argument or empirical evidence suggests that alcohol advertising has a significant effect on abuse. Alcohol abuse is a complex public health problem. There seems no reason to assume that advertisements for alcoholic beverages induce significant numbers of people to become alcoholics or to violate the laws against drinking and driving.

Empirical research has investigated the effect of alcohol advertising on total consumption. Even if such a link could be established, there would be no basis for inferring an additional link between consumption and abuse. This is because, unlike cigarette smoking, consumption of alcohol in moderation by most adults in appropriate situations has no adverse effects and may have health benefits.[1]

Even though the problem is abuse rather than consumption of alcohol, we have reviewed the theoretical arguments and empirical studies concerning the effect of alcohol advertising on consumption, particularly the effect on demand.

Economic theory predicts that demand for alcoholic beverages would be greater with the level of advertising currently observed than in a hypothetical world without any advertising at all. This prediction follows from advertising's informational role. By providing information about products and sellers, advertising helps consumers identify more satisfying products. In addition, advertising provides a way for firms to build reputations, which in turn provides incentives to supply high quality products that consumers wish to purchase. In general, consumers would not respond to advertising if they did not believe that in so doing they increase their satisfaction. Furthermore, firms would not advertise if consumers did not respond, since advertising is costly. Because advertising enables consumers to achieve greater satisfaction from consumption, profitable advertising will tend to cause consumers to purchase more at a given price. Thus, theory predicts that advertising will increase total industry demand.

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[1] Gordon and Gordon, 1984, find that moderate consumption of alcohol slightly reduces the risk of heart disease. On the other hand, the Surgeon General has concluded that alcohol consumption during pregnancy may harm the fetus. Advisory Opinion, U.S. Surgeon General, July 1981, cited by Omnibus Petition, p. 9.

Although theory predicts the qualitative nature of the relationship between advertising and demand, it is silent about the magnitude of the effect. At the level of advertising currently observed, a marginal change in the level of advertising expenditures may have only a small effect on demand. In fact, when we discuss the empirical literature later in this report, we will see that most studies of alcohol and other advertising have found little or no effect of variations in advertising on total industry demand and consumption. While the uniformity of this result is striking, it does not mean that marginal changes in advertising have no effect at all. Studies could have failed to uncover a relatively small but important effect because the data were insufficient in quantity and quality to separate the effect of advertising from other changes that were occurring at the same time.

In any event, because of diminishing returns, economic theory predicts that the total effect of all advertising on demand exceeds the effect of the last dollar, multiplied by the total level of advertising expenditures. This difference between total and marginal effects is important to keep in mind because, typically, economists are able to measure only marginal effects. Econometric techniques cannot measure the total effects of advertising unless there are real world situations with and without advertising. While some of the studies reviewed below attempt to analyze the effects of advertising bans, most rely on variation in advertising expenditures and sales in markets where advertising was permitted, and thus estimate marginal effects of advertising on demand.[3]

In summary, we reach the following conclusions concerning the potential benefits of restricting alcohol advertising: The bulk of existing empirical literature addresses the effect of marginal changes of advertising expenditures on total demand or consumption. Little or no effect is confirmed for broadly defined industries such as alcoholic beverages. This makes it highly unlikely that a substantial effect exists, but it is possible that a small effect exists that the studies did not find because of paucity of data. However, these studies on the effects of *marginal* changes in advertising on consumption tell us nothing about the effect of *all* advertising and do not

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[3] There are partial advertising bans for alcohol in a few states and Canadian provinces. In principle, data from these cases might be used to determine the effects of such partial bans at the state level. However, a state ban that applies only to ads originating locally is not comparable to a national ban. Also, there are a number of studies of the effects of the cigarette broadcast advertising ban, but it is difficult to separate the effects of the ban and the simultaneous elimination of anti-smoking ads. These issues are discussed in detail below.

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provide an empirical basis to predict the effects on consumption of a broadcast advertising ban or ad content restrictions. The few studies that do look at large changes in advertising (specifically, studies of the ban on cigarette advertising on TV) are inconclusive, and find at most a very small change in overall consumption. Finally, none of the theoretical or empirical discussion of effects of advertising on consumption sheds light on the real issue, which is the effect on alcohol abuse.

B. Costs of Advertising Restrictions

While it is unclear whether restrictions on alcohol advertising would yield social benefits, there are convincing reasons to believe that advertising of alcoholic beverages serves socially useful purposes, and that advertising restrictions would have significant costs. In considering these costs, it is worth repeating that consumption of alcohol in moderation by adults in appropriate situations has no adverse effects and may have health benefits. Thus, as in the case of other goods, greater information and lower prices benefit consumers.

Advertising can contribute to the achievement of an efficient allocation of resources and benefit consumers in several different ways. Most of the benefits of advertising stem from its role in increasing the flow and reducing the cost of information to consumers.

First, advertising provides information about product characteristics that enables consumers to make better choices among available goods. Such information can enable consumers to choose the particular products or brands that best satisfy their preferences. Thus, advertising may lead to expansion of the market shares of superior brands or brands that cater to particular tastes.[3] Moreover, the ability of a firm to inform consumers about the characteristics of its products will increase the firm's incentive to adapt its products to better suit consumer preferences. This will encourage improvements in quality, and innovations such as low alcohol, low caloric beer and wine. Similarly, advertisements contain a variety of other types of information that is useful to consumers. For example, firms may inform consumers about lower prices or special offers. They may also inform consumers about the appropriate use of products, such as when to serve dry rather than sweet wine.

Second, theoretical arguments and empirical studies indicate that advertising increases new entry and price competition and hence reduces market power and prices in at least some industries.[4] Advertising facilitates entry by lowering the information barrier imposed by the fact that consumers have more experience with established brands than with new ones. Advertising increases price competition by making it easier for firms to communicate the fact that they are offering lower prices or new products. Some industries where there is empirical support for this argument are eyeglasses, toys, prescription drugs, and legal services.[5] In both cases advertising restrictions were associated with higher prices.

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[3] There is considerable evidence in the marketing literature that advertising does in fact change market shares. Ackoff and Emshoff, 1975, and Lambin, 1976.

[4] Advertising might act as a barrier to entry to the extent that it is subject to economies of scale. Comanor and Wilson, 1974, present the argument that advertising may be an entry barrier; Shapiro, 1982, criticizes their argument.

Third, advertising facilitates the development of brand reputations. A reputation, in turn, gives a firm an incentive to provide products that are of consistently high quality, that live up to claims that are made for them, and that satisfy consumers. If a firm does not satisfy consumers, it will not attract the repeat sales that it needs to make its investment in advertising pay off and will lose its reputation.[6]

Two additional considerations should be kept in mind in considering a ban on broadcast advertising for beer and wine. First, a ban on one form of advertising will, to some extent, induce firms to substitute other more expensive or less effective forms of advertising. One would expect a broadcast ban to increase print and billboard advertising. To the extent this occurs, the ban wastes resources by raising costs. Second, to the extent that beer and wine advertising affects consumption, a major part of the effect might be to encourage consumption of beer and wine rather than hard liquor. This is particularly likely for young people, who receive much of their product information from TV. Thus, a ban on broadcast advertising of beer and wine might increase consumption of hard liquor by young people.

C. Alternatives to Advertising Restrictions

In evaluating use of advertising restrictions to deal with alcohol abuse, it is important to consider the merits of other forms of government intervention that might have equal or greater benefits and lower costs. In particular, since the problem is alcohol abuse rather than consumption, it would make sense to adopt policies that focus specifically on abuse. An example might be stricter enforcement and greater penalties for driving while intoxicated. In the area of information, rather than restrict advertising, the government might undertake campaigns to discourage drunk driving, to encourage people with drinking problems to seek counselling and treatment, and to alert pregnant women to the hazards of alcohol consumption. Certain policies aimed at consumption might also be appropriate where the consumption is highly likely to have undesirable effects. Minimum drinking ages would be an example.

II. EMPIRICAL LITERATURE REVIEW

The remainder of this report surveys and evaluates the existing empirical literature on the effects of advertising on alcohol consumption and abuse. It covers not only research on alcohol advertising but also studies

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[5] On eyeglasses, see Benham, 1972, and Bond, 1980; on toys, see Steiner, 1973; on prescription drugs, Cady, 1976; and on legal services, Jacobs et al., 1984. Kessides, 1983, presents empirical research supporting the theory that advertising facilitates entry in many industries.

[6] Klein and Leffler, 1981. Nelson, 1974, argues that advertising helps direct consumers to higher quality goods. The concept of advertising as an efficient "signal" of high quality has been explored by Milgrom and Roberts, 1984, and Kihlstrom and Riordan, 1984.

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that provide a basis for useful inferences on alcohol advertising. After a brief discussion of hypotheses on the effects of advertising, we begin by reviewing studies that use data for many different industries. Next, we consider studies of cigarette advertising, which are useful on issues involving advertising bans and anti-consumption ads. Then we survey and evaluate studies that deal specifically with alcohol advertising. A final section offers conclusions. At the end are two subappendices. The first evaluates the studies relied upon in the CSPI petition; the second is a lengthy annotated bibliography.

This review emphasizes empirical studies that test for effects of advertising on consumption behavior. We focus on statistical analyses of real world data. In the case of studies dealing specifically with alcohol, we also review experimental studies of the effects of advertising on consumption under laboratory conditions, even though it is difficult to apply the results to the real world. However, we have not included studies of the effects of advertising on consumers' self-reported attitudes because there is no way to predict the effects of self-reported attitudes on actual consumption.

A. General Advertising Studies

A number of studies use statistical techniques and real world data to test for the effect of advertising on total consumption in each of many industries over a period of a decade or longer.[7] These studies generally estimate the effect of advertising on consumption while using statistical techniques to hold constant the effects of variables such as industry price and consumer income. Because price is held constant, the results of these studies can be interpreted as estimates of the effect of advertising on consumer demand for an industry's product.

We reviewed the most important of these studies as well as other reports that survey this literature.[8] The large majority of such studies found little or no effect of advertising on total industry demand.

The principal exception to this generalization is a controversial study by Comanor and Wilson (1974), for which the principal results cover 28 industries during 1948-64. Comanor and Wilson found that advertising had a significant positive effect on industry demand in 10 industries. This study and its results have been widely criticized. One problem is the use of IRS data for advertising expenditures.[9] Grabowski (1976) used different advertising data and found no impact of advertising on total demand.

All of the studies reviewed suffer to a greater or lesser extent from problems in their data and methodology, which limit their reliability. Available data on advertising expenditures are likely to be of questionable quality,[10] partly because it is not in the interest of firms to disclose their expenditures to competitors. The criticism of the IRS advertising data has been mentioned above. Most data are for annual time periods, while data for shorter periods might be necessary to uncover any effects of changes in advertising.[11] Also, the typical number of observations, around twenty, is small for statistical purposes. A larger number of observations might be required to confirm an effect of advertising on total demand, particularly if this effect was small relative to that of other variables. As we noted earlier, the fact that studies do not find a significant effect of advertising on total demand may reflect the paucity or low quality of data and may not justify a conclusion that advertising does not have such an effect.

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[7] In most of these studies, this topic is only one of several issues investigated rather than the principal focus.

[8] We reviewed studies by Grabowski, 1976, Lambin, 1976, and Wilder, 1974, and surveys by Albion and Farris, 1981, and Schmalensee, 1972.

[9] Grabowski, 1976, and Schmalensee, 1972.

Most studies done before about 1970 and some done since are also flawed in their statistical methodology, which does not take account of what might be called "reverse causation." This refers to the fact that when a given industry has larger total sales, all firms combined will tend to spend more on advertising. Thus consumption will tend to be correlated with advertising expenditures regardless of how advertising affects total consumption. Failure to deal with this problem would tend to cause a study to conclude that advertising has a larger effect on industry demand than it in fact does. However, since 1970 studies have generally used statistical techniques to overcome this problem.[12]

Another problem with studies that deal with broad industry aggregates is that they do not consider the effects of advertising by other industries on the demand for the output of the industry in question. As a result, these studies will tend to underestimate the effect of an industry's advertising on its own demand. For example, suppose that soft drink advertising tends to increase whenever alcohol advertising increases, perhaps because both respond in the same way to changes in advertising costs. Suppose also that soft drink advertising partially offsets the effect of alcohol advertising on the demand for alcohol. In this case, the estimated effect of changes in alcohol advertising on demand for alcohol will actually be an estimate of this effect *net* of the offsetting effect of associated changes in soft drink advertising. This will tend to underestimate the effect of changes in alcohol advertising alone, including the effects of alcohol advertising restrictions.

The significance of the problems of data and methodology is suggested by the fact that some studies have produced questionable results on matters other than the link between advertising and total demand. Some find that price increases do not reduce industry sales significantly.[13] Some find that advertising does not affect even firm sales, which implies that firms irrationally advertise even when doing so reduces profits.[14] Also, some of the models have proved to be unreliable for prediction.[15]

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[10] Bourgeois and Barnes, 1979, for alcohol.

[11] Schmalensee, 1972, pp. 214-15. However, Duffy, 1982, and Hagen and Waterson, 1983, used quarterly data for alcohol and found no effect of advertising on industry demand.

[12] Nevertheless, in the case of studies that deal specifically with cigarette or alcohol advertising, even some recent studies do not use appropriate statistical techniques.

[13] Comanor and Wilson, 1974, Grabowski, 1976, Peles, 1971, Schmalensee, 1972 (cigarettes), Bourgeois and Barnes, 1979 (alcohol), and Hagen and Waterson, 1983 (wine). On the other hand, in the case of cigarettes, Doron, 1979, arrived at an implausibly high estimate of the responsiveness of demand to price.

Apart from these issues of reliability, problems arise in using the results of even a reliable study of the type available to predict the effect of a ban on broadcast advertising or other major regulatory changes. As we noted earlier, existing studies test for effects of changes in advertising expenditures within the range observed during recent years. As a result, they are directly useful in answering questions about the effect of reducing advertising expenditures by, say, 5 percent. However, even if one knew that a reduction of this sort would have only a negligible effect on industry demand, one could not validly infer that a ban on advertising or on broadcast advertising or a restriction on the content or location of ads would have no significant effect.

B. Cigarette Advertising Studies

We have reviewed the empirical literature on cigarette advertising and consumption because the cigarette market provides an opportunity to study important issues that are not covered in detail in the general and/or alcohol advertising literature, particularly the effects of an advertising ban and of anti-consumption ads and other forms of health information. The findings of the cigarette literature on these topics will be discussed after we consider the effects of commercial advertising on total cigarette consumption.

1. Cigarette Advertising and Total Consumption. Most of the large number of studies of cigarette company advertising have found little or no effect of changes in total advertising on total consumption. This result is consistent with that for the multi-industry studies reviewed above.

For example, according to Hamilton's 1972 review of the literature from the period before the widespread dissemination of health risk information in 1953, early studies found little or no effect of advertising on total demand. Virtually all recent studies reach the same conclusion.[16]

The cigarette advertising literature also provides some empirical information on the effect of advertising on consumption through the price of the product, apart from the effect through total industry demand at a given price. Schneider *et al.* (1981) suggest that advertising raises cigarette costs and hence prices. By contrast, Porter (1984) concludes that advertising reduces market power and prices. Although the results are contradictory, they do suggest that predictions about the effects of advertising on total consumption must consider price as well as demand effects.

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[14] Schmalensee, 1972.

[15] Porter, 1984, concerning Ippolito *et al.*, 1979, and Schneider *et al.*, 1981.

[16] Hamilton, 1972, Schmalensee, 1972, Wilder, 1974, Grabowski, 1976, and Schneider *et al.*, 1981, find no significant effect. Doron, 1979, Lewit *et al.*, 1981, and Porter, 1984, find a small effect. Comanor and Wilson, 1974, find no effect with some statistical techniques and an effect with others; the technique that controls for reverse causation indicates no effect.

2. Health Information and Anti-Consumption Ads. Studies of cigarette consumption provide useful empirical measures of the importance of health risk information in determining consumer demand. Studies deal with three factors that changed consumer information:

a. In 1953-54, the American Cancer Society reported on health risks of smoking, and *Consumer Reports*, *Reader's Digest*, and at least sixteen other national magazines published articles on the health hazards of smoking. Hamilton (1972) concludes that this information reduced total demand for cigarettes, but Ippolito *et al.* (1979) conclude that the 1953-54 information did not permanently affect total demand. Schneider *et al.* (1981) find that the primary response to the 1953 health information was a movement by cigarette smokers to filter cigarettes, which have less tobacco.

b. In 1964-65, a report by the Surgeon General confirmed the link between smoking and lung cancer and Congress required a health warning on cigarette packs and in print ads. A large number of studies find that the Surgeon General's report reduced total cigarette or tobacco demand.[17]

c. In 1968, under its Fairness Doctrine the FCC required that an anti-smoking ad be broadcast for every four pro-smoking ads. These anti-smoking ads ended when the cigarette broadcast advertising ban went into effect in 1971. Hamilton (1972), Doron (1979), and Porter (1984) conclude that these anti-smoking ads reduced total demand for cigarettes. Lewit *et al.* (1981) reach a similar conclusion for teenagers. By contrast, Ippolito *et al.* (1979) find little effect from either the introduction or the removal of anti-smoking ads.[18]

3. The Broadcast Advertising Ban. In 1971 all cigarette advertising was banned from radio and TV broadcasting. As one would expect, the broadcast ad ban led to a reduction in total cigarette advertising expenditures. However, there was evidently an increase in non-broadcast advertising that partially offset the elimination of broadcast advertising.[19]

In principle, the cigarette case provides an opportunity to observe whether a broadcast advertising ban might have a significant effect on consumption even though most of the studies discussed in the preceding subsection suggest that *marginal* changes in total advertising expenditures would not change total cigarette consumption. Unfortunately, the problem of estimating the effect of the ban is complicated by the fact that when broadcast ads were banned there was also a reduction in anti-smoking advertising. As a result, there are statistical problems in separating the effects of the ban from the other changes that occurred at the same time.

The net effect of the broadcast ad ban on cigarette consumption is controversial. Four studies suggest that the ban might have increased cigarette consumption, although the reasons for this vary among the studies. Hamilton (1972) predicted on the basis of his empirical work for the pre-ban era that the combined effect of the ban and the elimination of anti-smoking ads mandated by the Fairness Doctrine would be to increase the demand for cigarettes. Doron (1979) confirms this. Lewit *et al.* (1981) conclude that for teenagers there was a small decline in smoking participation due to the ad ban but that this decline was considerably smaller than the decrease in smoking participation due to the anti-smoking ads required by the Fairness Doctrine. Schneider *et al.* (1981) conclude that the ban had no significant effect on the total demand for cigarettes at a given price but led to an increase in cigarette consumption because it lowered the price of cigarettes and ended the broadcasting of anti-smoking ads.

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[17] Hamilton, 1972, Doron, 1979, Ippolito *et al.*, 1979, and Schneider *et al.*, 1981.

[18] Schneider *et al.* (1981) could not conclude that the effect was different from zero.

[19] For confirmation for the U.K., see van Iwaarden, 1983, p. 228.

Porter (1984) reached a different conclusion through a complicated reasoning process. He found that elimination of broadcast advertising reduced the total demand for cigarettes at a given price by a small amount, and that it also increased the price of cigarettes. The resulting tendency for consumption to decline was partially offset by the end of anti-smoking ads, but the net effect of all these changes was still to reduce cigarette consumption by 3 percent.

There is some casual speculation that the ad ban may have increased the cost and reduced the flow of information to consumers about newly introduced low-tar brands, or that it may have impeded introduction of such brands, and hence that it slowed the movement to low-tar cigarettes.[20] However, there is no systematic empirical evidence on this point.

4. Evaluation. The weaknesses discussed in connection with the general literature also apply to studies of cigarette advertising. In addition, there is considerable disagreement in the literature on the appropriate statistical methodology to use in order to separate out the effects of the many important changes that occurred in the cigarette market during the 1950s-1970s.[21] As a result, most of the results are controversial.

A final difficulty in drawing lessons from the cigarette experience is that smoking tends to be more strongly addictive than drinking, with habits fixed in adolescence or early adulthood. Since these are the same years in which TV advertising exerts a disproportionate influence, one must be cautious in leaning upon the cigarette results in order to predict the effects of advertising restrictions in the alcohol market.

D. Alcohol Advertising Studies

Alcoholic beverages are often divided into hard liquor, wine, and beer for research and policy purposes. In evaluating the effect of advertising for, say, beer, it is useful to keep in mind that such advertising might affect the market shares of individual brands of beer without substantially affecting total beer demand. Or, the advertising might also affect total beer demand without substantially affecting total demand for alcohol, if it led to substitution from hard liquor to beer. There is already a voluntary broadcast advertising ban for hard liquor.

Another feature of alcoholic beverages that is important to keep in mind is that, for policy purposes, the principal issues involve underage, hazardous, and excessive drinking. Moderate drinking by adults in non-hazardous situations has no adverse effects and may have health benefits. Studies relating to advertising and total demand or consumption do not allow reliable inferences about the impact of advertising on alcohol abuse, since there is unlikely to be a simple relationship between total consumption and abuse.[22]

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[20] Schneider et al., 1981, p. 610.

[21] See, for example, Schneider et al., 1981.

1. Alcohol Advertising and Total Consumption

a. Behavioral Studies. The relationship between alcohol advertising and total consumption remains controversial in spite of a number of studies.[23] Most of the available studies that use real world data fail to find a significant positive effect.[24] The same is true for most of the studies that look at the three separate product groups, i.e., hard liquor, beer, and wine. That is, most studies dealing with advertising for, say, beer fail to find an effect on the total demand for beer.[25]

There are significant exceptions to these generalizations. McGuiness (1980) finds that advertising of distilled spirits increases total demand for alcohol, whereas advertising for beer and wine does not. Comanor and Wilson (1974) find that advertising increases demand for distilled liquor and for wine.[26] However, since there is some evidence that the increase in demand for one category of alcoholic beverages is a result of substitution from other categories,[27] studies that use data for the individual categories do not provide much evidence on whether advertising increases total demand for alcohol.

b. Experimental Studies. Unlike the multi-industry and cigarette literature, in the case of alcohol we reviewed a number of studies that used self-reported rather than observed data and experimental rather than real world situations.

A number of these studies found that exposing subjects to different amounts of alcohol advertising on a single occasion while they are drinking or watching a TV show or before going to a restaurant has little or no effect on their alcohol consumption at the time or when they eat the next meal.[28]

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[22] However, two studies of advertising restrictions using state data that are reviewed below do address the link between advertising restrictions and alcoholism and alcohol-related mortality.

[23] Blane and Hewitt, 1977.

[24] Grabowski, 1976, Bourgeois and Barnes, 1979, Duffy, 1983, Hagan and Waterson, 1983.

[25] Peles, 1971, for beer; Wilder, 1974, for distilled liquor, for malt liquor, and for wine; Comanor and Wilson, 1974, for malt liquor; Duffy, 1983, for each of the three categories; Hagan and Waterson, 1983, for each of the three categories.

[26] See the criticisms of Comanor and Wilson above.

[27] Bourgeois and Barnes, 1979, Intriligator et al., 1982.

[28] Kohn et al., 1984, Kohn and Smart, 1984, McCarty and Ewing, 1983.

One found a positive effect.[29] However, such studies do not provide a reliable basis for predicting the effects of advertising in general or the effects of advertising restrictions. It would not be valid to extrapolate the short-term impact of a brief exposure to advertising in a contrived setting to predict the longer-term, cumulative effect of repeated exposure in the real world.

c. Self-Reported Behavior. Atkin and Block (1980) report a positive relationship between self-reported exposure to alcohol advertising and self-reported alcohol consumption.[30] This report differs from the experimental studies described above in three ways, the first of which would tend to make the Atkin and Block study more useful and the other two of which make it less useful.

The first difference is that the experimental studies examine the effect of a very small change in advertising exposure, while the Atkin and Block study considers larger differences in advertising exposure levels.

Second, in the experimental studies subjects are allocated randomly to the high and low ad exposure groups. In the Atkin and Block study, subjects themselves determine their level of exposure based on such things as how many hours of TV sports they watch. It follows that the group that chooses a high level of exposure is different in systematic ways from the group that chooses a low level of exposure. For example, they are probably more sports-oriented. This difference in personal characteristics rather than exposure to ads could be the cause of the difference in alcohol consumption. Thus, Atkin and Block's finding does not allow one to conclude whether ads affect consumption.

Third, in the experimental studies, the investigators observe and record the ad and consumption levels. In the Atkin and Block study, the investigators relied on the subject's self-reported recollections, which could be systematically inaccurate in a way that would distort the results.

These and other shortcomings make the Atkin and Block study inconclusive.

2. Advertising Restrictions. The province of Manitoba, Canada, banned print and broadcast advertising of beer in 1974. Ogborne and Smart (1980) conclude that this ad ban did not affect consumption, but their study can be criticized on the grounds that it did not hold constant many of the other variables that might have affected consumption. In any case, since the ban applied only to ads originating in Manitoba, it is not clear how much change there was in consumer exposure to beer ads.

Some states restrict alcohol advertising. Ogborne and Smart (1980) did not find a significant effect of these restrictions on alcohol consumption or alcoholism. Intriligator *et al.* (1983) found no effect of these advertising restrictions on total alcohol consumption, but they found that the restrictions reduced alcoholism.[31] Also, Intriligator *et al.* did not control for state restrictions on the sale of alcohol. Since states that restrict advertising may also restrict sales, there would be a tendency for the study to overestimate the effects of advertising restrictions.

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[29] Brown, 1978, cited in N. Dorn and N. South, 1983, p. 63.

[30] Atkin *et al.*, 1983, is a similar study.

Blane and Hewitt (1977) conclude from their review that partial bans on alcohol advertising have had little or no effect on consumption.

In any event, the nature of local and national advertising is likely to be different. For example, local advertising may emphasize information about price and availability, while national advertising may emphasize brand image. As a result, it would be difficult to use the results of studies concerning state restrictions to predict the effects of a national ad ban.

3. **Consumption and Abuse.** Intriligator *et al.* (1983) conclude from a comparison of different states that average consumption of alcohol has no significant effect on either alcoholism or alcohol-related mortality (even though, as mentioned above, advertising restrictions were found to have an effect.) Atkin *et al.* (1983) find that higher self-reported exposure to advertising is associated with not only higher self-reported consumption of alcohol but higher self-reported hazardous drinking, including drinking and driving. However, this study is subject to the same types of weaknesses as the Atkin and Block study discussed above and hence must be considered inconclusive.

E. Public Information Campaigns

Since the early 1970s, mass media public education campaigns have been directed at alcoholism and drunk driving. Although there are no empirical studies of the effect of these ads on alcohol consumption or abuse, there is evidence that public service campaigns affect behavior. We have already cited the cigarette case.

In a recent study of crime prevention public service announcements, Mendelsohn and O'Keefe (1984) find that a significant number of the sampled population report behavioral changes directly attributable to these ads. Such surveys based on self-reported behavior are less desirable than ones based on actual observations, but Mendelsohn and O'Keefe's results are suggestive. They interviewed a group of people before and after the ad campaign. Those who reported being exposed to the ads also reported an increase in specific activities advocated in the ads.

Mendelsohn and O'Keefe survey the existing literature on the effect of public service ad campaigns. They cite several earlier studies, dating back to 1940-50, that found that media campaigns had no effect on viewers. However, more recent studies have found positive effects; the authors point to heart disease prevention as an example. They explain the discrepancy between the earlier and later studies in part by the increased role of television in society.

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[31] They found that the restrictions increased the mortality rate by a much smaller percentage. Again, these restrictions did not prevent consumers from viewing ads originating outside the state.

F. Conclusions

The bulk of existing studies of alcohol and other advertising have found little or no effect of variations of advertising on total industry consumption.[32] However, many of the studies have technical flaws in their data or methodology or produce bizarre results that make their conclusions concerning advertising open to question.

It is important to be clear what these results imply. Since the data are for the most part drawn from situations in which the ratio of advertising expenditures to the value of industry sales fluctuated within a limited range, at most this conclusion justifies inferences about the effects of changes in total advertising expenditures within the usual range. For this range, the literature does strongly suggest that the effect of advertising on total industry consumption or demand is not substantial, because if the effect were substantial it would certainly have been detected by a good share of existing studies. On the other hand, the literature does not justify a conclusion that such changes in advertising have no effect on total consumption or demand. Many studies could have failed to uncover a relatively small but important effect because the data were insufficient in quantity and quality to separate the effect of advertising from other changes that were occurring.

In any case, the existing literature tells us little about the effect of changes in advertising that are different in type or magnitude from those that occurred during the periods under study. Suppose, for the sake of argument, that over the past decade variations on the order of 10 percent in the amount of print, billboard, and broadcast advertising had little or no effect on aggregate consumption. As we explained earlier, it would not follow that banning all advertising, or all broadcast advertising, would have little or no effect.

Furthermore, the problem in the case of alcohol is not consumption but abuse. The literature sheds virtually no light on the relationship between alcohol advertising and abuse.

Whatever the effects of alcohol advertising on total alcohol demand or abuse, advertising does serve several useful purposes, because it provides valuable information to consumers. In considering these effects, it should be kept in mind that consumption of alcohol in moderation by adults (other than pregnant women) in appropriate situations has no adverse effects and may have health benefits. Thus, as in the case of other goods, greater information and lower prices benefit consumers.

A final implication of the literature review is that anti-consumption ads, health warnings, and information about health hazards may have substantial effects on consumption. There is overwhelming evidence that health information disseminated in a variety of ways has reduced cigarette consumption. The broadcasting media currently run a significant number of public service messages concerning the dangers of alcohol abuse. One unintended effect of restricting broadcast advertising for alcohol might be a reduction in the number of free public service announcements concerning alcoholism and drunk driving.

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[32] Some studies suggest that advertising affects price and hence consumption. However, the direction of the effect is controversial.

APPENDIX A-1

DISCUSSION OF EMPIRICAL SUPPORT CITED IN THE OMNIBUS (CSPI) PETITION

The CSPI petition for the regulation of unfair and deceptive alcoholic beverage advertising and market practices cites five studies in support of the contention that "certain marketing and advertising practices of the alcoholic beverage industry contribute to and exacerbate"[1] the use of alcoholic beverages. On closer examination not all of these studies are as supportive of this contention as would appear from the discussion in the petition.

The first paper cited is Whitehead's (1983) review of the literature on the effects of advertising on demand. Whitehead notes studies in support of both sides of the issue of "whether the role of advertising is simply to allocate shares of an existing market or whether it can also increase total demand." Although his study is cited in the petition as being supportive of the hypothesis that advertising increases industry demand, Whitehead acknowledges an extensive literature showing no such effect, and notes that "a causal link between these two phenomena has not been demonstrated."[2]

Two of the five empirical studies mentioned by Whitehead in support of the notion that advertising increases industry sales are studies by Cowling et al. (1975) and Taylor and Weiserbs (1978). These are cited independently in the CSPI petition and are discussed below. The other three studies are (1) Comanor and Wilson (1974), a highly controversial study called into question by the subsequent work of Grabowski (1976); (2) McGuiness and Cowling (1975), a study of cigarette advertising, which has been partially contested by Johnston (1980); and (3) Bourgeois and Barnes (1979), in which a positive relationship was found between print advertising and beer consumption. Whitehead notes that interpretation of Bourgeois and Barnes' results are "hindered by the fact that the advertising for all three types of beverages is aggregated while their models seek an impact on the three types of alcoholic beverages individually."[3] In addition, Bourgeois and Barnes found a negative relationship between print advertising and liquor consumption and no significant effect of either print or broadcast advertising on total per-capita alcohol consumption.

In sum, Whitehead presents no original findings, and although he discusses several studies that support the conclusions quoted in the CSPI petition, he cites other evidence that contradicts those conclusions.

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[1] CSPI petition at 4.

[2] Whitehead, at 142.

[3] Whitehead, at 134.

The second study cited in the petition is Atkin and Block (1981). This study is composed of seven separate reports, six of which are concerned with impressions and attitudes rather than behavior, and are therefore of little value in the empirical determination of the effect of advertising on demand. The relevant report is the field survey which finds a positive relationship between "exposure" to alcohol advertising and alcohol consumption.

There are serious flaws in the Atkin and Block study that render it entirely inconclusive with respect to the effect of alcohol advertising on the overall demand for alcoholic beverages. Atkin and Block themselves note that theirs is an exploratory study that was not intended to be a rigorous test of any hypothesis.

There are a number of areas of difficulty. First and foremost is the issue of causality, exacerbated by the poor measure of advertising exposure. Because advertising exposure is self-reported and based on such factors as the amount of television sports shows viewed, and the amount of attention paid to alcohol advertising, it is highly likely either that alcohol consumption determines the exposure to advertising (the attention paid to ads), or that some third factor (such as preferences for sports shows)jointly determines exposure and alcohol consumption. This problem alone is so acute as to render futile any attempt to reach conclusions about the direction of causality between the two correlated variables. In addition there are problems with the sampling technique and self-reporting of alcohol consumption.

In conclusion, the Atkin and Block study is not, and was never intended to be, a rigorous test of the hypothesis that alcohol advertising increases alcohol consumption. Other results (based on Atkin and Block's remaining reports) noted in the petition are impressionistic and suffer from many of the same weaknesses as do the field survey results.

Blane and Hewitt (1977) is the third study cited in the petition. However, it is apparently not the correct citation as it has nothing to do with advertising. Another study of theirs, "Alcohol and Advertising" (see bibliography), appears to be the relevant article. In this paper, while conceding that the marketing research literature indicates some targeting by the alcohol industry of advertising at new buyers (i.e., an intention to raise overall demand and not just induce brand switching), Blane and Hewitt nonetheless conclude that a ban on alcohol advertising would not be a worthwhile remedy to the problem of alcohol abuse. They support this contention with evidence from countries where advertising bans are in effect and alcohol consumption has continued to rise.

Lastly, the CSPI petition refers to two general studies, cited by Whitehead, of the effect of advertising on demand for all products (not just alcoholic beverages). Both Taylor and Weiserbs (1972) and Cowling et al. (1975) found that advertising (in general) does tend to increase aggregate consumption.

Taylor and Weiserbs found a positive relationship between current advertising expenditures for the economy as a whole and current aggregate consumption, and made some attempt to control for simultaneity--that is, the possiblity of reverse causation. This is a potential problem because there are likely to be feedback effects between advertising and consumption. In other words, not only may advertising increase sales, but as demand overall sales increase, firms may increase their advertising campaigns in response.

There are two possible difficulties with Taylor and Weiserbs' results having to do with the simultaneity problem. First, although Taylor and Weiserbs adjust for simultaneity bias using two stage least squares, which will yield consistent estimates (that is, unbiased for very large samples), it is the nature of annual time series studies to have a relatively small sample. For this reason we cannot be certain that the measured effect of advertising on consumption is not biased upward. Second, and possibly most important, Taylor and Weiserbs' use of annual data may be inappropriate for measuring the effect of advertising on consumption. This is because other studies show that the bulk of advertising's impact on sales occurs within six months (see Clarke 1976). Thus the effect of measuring advertising expenditures that occur over the course of a year will include the feedback effect of sales on advertising.This suggests that unless quarterly or monthly data can be used it may not be possible to measure correctly the relationship between advertising and consumption. An additional issue that should be mentioned is whether the simple model employed is an appropriate specification of the consumption and savings functions.

The general study of the effect of advertising on consumption in Cowling et al. does use quarterly data. Again the results seem to indicate a significant positive effect of advertising on consumption, controlling for simultaneity bias. They estimate that a ten percent increase in advertising expenditures would lead to a .46 percent increase in aggregate consumption. Although this is not a very elastic response,[4] the fact that aggregate consumption is approximately 30 times the magnitude of advertising expenditures implies that the effect in dollar terms would be nontrivial.

While the results of Cowling et al. and, to some extent, of Taylor and Weiserbs, are evidence in support of the petition, a word of caution is in order. The implications of results dealing with the effects of economy-wide advertising expenditures on aggregate consumption for the issue of the effect of industry-specific advertising on industry demand are not definitive.

Conclusions

In sum, none of the five studies cited in the CSPI petition contain persuasive evidence that the advertising of alcoholic beverages causes increased consumption of alcohol overall. Two of the studies are reviews of the literature presenting mixed results at best, rather than the clear support implied by the omnibus petition. Two of the other three studies suffer from serious methodological flaws and as such should be regarded as inconclusive. The last study, Cowling et al. does provide persuasive evidence that overall advertising in the economy affects overall consumption. This is suggestive that advertising of alcoholic beverages may increase the overall demand for alcoholic beverages, but it is by no means conclusive with regard to industry-specific behavior.

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[4] Taylor and Weiserbs' results yielded an elasticity approximately three times as large.

APPENDIX A-2

ANNOTATED BIBLIOGRAPHY ON THE EFFECTS OF ADVERTISING ON INDUSTRY DEMAND

I. GENERAL STUDIES

1. Albion, Mark and Paul W. Farris (1981), *The Advertising Controversy: Evidence on the Economic Effects of Advertising*. Boston, Auburn House.

While there are a number of able surveys in book form (Simon (1970), Ferguson (1974), and Ornstein (1978)), they have focused primarily on the concentration issue: whether advertising promotes monopolistic behavior. In contrast, Chapter 4 of Albion & Farris offers a convenient summary of the work done on the issue of industry demand - or "primary" demand to use the terminology in the classical work of Borden (1942). After a brief discussion, the authors conclude:

> Our opinion based on the literature review is that the effect of advertising on primary demand or on the allocation of consumer spending across industries is severely limited by the other economic and social forces affecting the size of the market. In the face of negative forces, advertising can probably do relatively little to conteract the decline of a market. In the presence of strong growth trends, advertising may accelerate the growth rate, but it remains to be shown that it is a significant factor in determining the ultimate size of an industry or market.

2. Ashley, R. C., W. J. Granger, and R. Schmalensee (1980), "Advertising and Aggregate Consumption: An Analysis of Causality," *Econometrica*, 48, pp. 1149-67.

Ashley et. al. used quarterly U.S. data for 1956-75 (eighty observations) to test whether advertising affected aggregate consumption. After using the Box-Jenkins time-series technique (described below), they concluded that advertising had no significant effect on consumption. In fact, the evidence indicated the direction of causality may be from consumption to advertising.

Ashley et. al. used a five step procedure to determine the direction of causality between consumption and advertising.

(1) Each data series (consumption and advertising) was "pre-whitened" by building single series ARIMA models using the Box-Jenkins procedure. This removed seasonal variations and trend effects from the two data series.

(2) The cross-correlogram between the residuals of the two "pre-whitened" series was computed. Significant correlations constitute a

"tentative" sign that one variable might cause the other. The additional steps accept or reject these tentative findings.

(3) "For every indicated causation, a bivariate model relating the residuals is identified, estimated, and diagnostically checked." One way causation can be identified at this point; if the data reveal joint causation, further steps are needed to unravel the process at work.

(4) From the fitted model of residuals, a corresponding model for the *original* data series is derived, checked, estimated, and diognostically evaluated. This model combines the univariate model from (1) with the bivariate model from (3).

(5) Finally, the bivariate model for the original series is used to generate a series of forecasts for a past-sample period. The corresponding errors are then compared to forecast errors derived from the univariate model to see if the bivariate model forecasts better. If it does, then the variable included in the bivariate model can be said to "cause" the other variable in a statistical sense.

Ashley et. al. used the first 60 observations to test for causality and formulate the univariate and bivariate models. These models were then used to forecast the final 20 observations. "The overall past-sample mean squared error for the bivariate model (past consumption and advertising used to forecast consumption) is only 5.1% lower than for the univariate model (past consumption used alone to forecast consumption), and tests suggest that this difference is not significant at any reasonable level." Thus, they concluded that "past advertising does not seem to be helpful in forecasting consumption. We must accordingly retain the null hypothesis that aggregate advertising does not cause aggregate consumption." The evidence suggested that the causality may run in the other direction: from consumption to advertising. Ashley et. al. tested various definitions of consumption (real vs. nominal; total vs. goods only) and these changes did not alter their results.

Ashley et. al. conducted a purely statistical test of causality. Their paper posited no theoretical basis for the link between advertising and aggregate consumption. They recognized that the high degree of *contemporaneous* correlation between consumption and advertising does not resolve whether "consumption causes advertising, advertising causes consumption, or a feedback structure (exists) involving both directions of causality" within each three month time period. The statistical evidence indicated that advertising does not significantly affect consumption beyond a three month period.

3. Comanor, William and Thomas Wilson (1974), *Advertising and Market Power*. Cambridge, Harvard University Press.

This is surely the most controversial of the industry demand studies and runs counter to the impression gathered from other studies that advertising fails to have a significant impact on industry demand. In their Chapter 5, Comanor & Wilson consider market demand. They take account of both the simultaneity problem and dynamic lags by adopting a variant of the model of Houthakker & Taylor (1970). They use both a stock and a flow version of this model. Finally, they run both single and simultaneous equation estimates. For the latter, they make an approximation of the nonlinear reduced form advertising equation and insert this in place of the true one in the two-stage least squares procedure.

Data on industry sales and advertising expenditure were gathered from the IRS *Source Book of Statistics on Income*. Price indices are taken from the wholesale price index series of the BLS. For the years 1948-1968 the analysis covered thirty industries, including malt liquor, wines, distilled liquor, and tobacco. For twenty eight of these, including the industries just mentioned, the equations were found to perform adequately.

After considering both advertising per capita and advertising relative to the total of all manufacturers, they report results only for the latter. Other independent variables are the price of the good relative to all consumer goods and income in one of three possible forms: per-capita constant-dollar consumer expenditure, per-capita constant-dollar disposable income, and an index of per-capita production of consumer goods.

Although many individual coefficients are not significant in their final model choices, they find the set of equations satisfactory in a number of respects. The signs of the price coefficient are generally negative, though advertising is more frequently significant than relative prices and virtually always positive. In their words:

> This result reflects the effects of advertising upon the inter-industry distribution of sales. Hence the argument that advertising serves merely to allocate spending between brands within broad groupings of products is called into question by these results. If anything, advertising comes through as a more important determinant of the interindustry allocation of sales than are relative prices.

Looking at their two-stage estimates, ten of the twenty eight industries have a significant advertising effect, which is always positive. Only six have a significant price effect, which was always, however, negative. Seven of the twenty eight industries have a significant income effect, in which all but one it is positive.

Turning to the individual industries, they find advertising to have no effect on malt liquor, though it does have an effect on wine and a smaller one on distilled liquor. Advertising has no significant effect on tobacco in the two-stage least squares analysis, though it did in the final model choice, which used ordinary least squares.

4. Cowling, K. et al (1975), *Advertising and Economic Behavior*. New York, Holmes & Meier Publishers.

This book, among other things, treats two issues we consider here: first, the effect of advertising on industry demand in the case of cigarettes and instant coffee, and second, the effect of advertising on aggregate consumption. The data used, however, are entirely from the United Kingdom. While the U.K. market for cigarettes may be of some interest, we already have a large body of literature that explicitly treats advertising in the U.S. cigarette industry. (This is not the case with the U.S. alcohol industry.) Aggregate consumption is of limited interest if we are primarily concerned with the effect of advertising on an industry's demand. In any case, for aggregate consumption we again have a sizeable body of literature explicitly examining the United States.

The model for the cigarette study is of the single-equation type and uses the real price of cigarettes deflated by a general price index, total real personal disposable income per capita, press and tv advertising per capita, and the health effects of smoking, all as explanatory variables. The dependent variable, cigarette consumption, is measured by total expenditure. The data which covers the period 1957-1968, is in quarterly form, so seasonal dummies are employed. The method used is ordinary least squares and the equation being fit is in log-linear form. A lagged dependent variable is included, as well as a geometrically weighted sum of past advertising, to represent advertising stock.

Cowling et. al. find no evidence that advertising affects the market for instant coffee, though they do obtain a substantial long-run effect with cigarettes, whose advertising-sales elasticity they find to exceed unity. These cigarette results, however, are reported differently in their otherwise similar article, McGuiness & Cowling (1975). While they again find very little short run impact of advertising, in the long run they now find that a ten percent increase in advertising will only lead to a 2.8 percent increase in sales. What is more, Johnston (1980) argues that McGuiness & Cowling (1975) make a conceptual error in developing their long run elasticities. When the correction is taken into account, the long run elasticity is some thirty to forty percent of the original value. Thus, a 10% rise in advertising would, even in the long run, lead to less than a 1% increase in sales.

Cowling et. al. also used quarterly U.K. data for the years 1956-66 to test whether aggregate consumption was influenced by advertising. They tested both Keynesian and Friedmanite consumption functions.

Cowling et. al. regressed current consumption on current income, current advertising, lagged consumption, the interest rate (Treasury Bill rate) and a time trend. Their OLS estimate yielded an elasticity between consumption and current advertising of between .0326 and .0482. These (any) OLS results are biased upward if consumption affects advertising, i.e., if a feedback effect exists.

Cowling et. al. controlled for simultaneity by using 2SLS. They found that aggregate consumption was significantly affected by advertising; the elasticity between consumption and advertising was .0462.

5. Grabowski, Henry (1976)," The Effects of Advertising on the Inter-industry Distribution of Demand," *Explorations in Economic Research*, 3, pp. 21-75.

Grabowski's work is in many respects a reexamination of the work of Comanor & Wilson (1974). He finds their results suspect because of the weak income effect. He also considers that their results may exhibit bias due to problems in the IRS data (already noted in Schmalensee (1972)) not also present in the price and income data. Spurious correlation would appear between sales and advertising whenever firms changed their IRS classification. In view of this, Grabowski chooses data collected by trade services. This advertising data includes four major media - network TV, spot TV, newspapers, and magazines. National income data were obtained from the Census, whereas interest rate series needed to predict advertising by firms were obtained using Moody's AAA bond rate quotations. The period covered is 1956-1972 and fifteen categories of goods are treated, including alcoholic beverages.

Like Comanor & Wilson, Grabowski considers both ordinary least squares single equation models and simultaneous equation models. Distributed lags are introduced. The independent variables are either per-capita or relative advertising, relative price, and disposable income per-capita. The method of estimation is two-stage least squares.

In his final results, income appears to be the most important explanatory variable. Prices typically appear with the right sign, but are not generally significant. Insignificant coefficients are observed for advertising, save in a few product .pacategories. In particular, advertising is not a significant variable in explaining the sale of alcoholic beverages.

Grabowski compares his results to Comanor & Wilson and suggests that the significant differences may be due to the fact that his industries are more aggregated than theirs. He also observes that his work includes only the later post-war period and that Comanor & Wilson's results may suffer from a structural shift in the middle of their sample period (1947-1964), due to the introduction of television.

6. Lambin, J. J. (1976), *Advertising, Competition and Market Conduct in Oligopoly over Time*. Vol. 94, Contributions to Economic Analysis, Amsterdam, North-Holland.

This work uses a total of 107 individual brands from 16 product classes and 8 different countries of Western Europe.

Cigarettes are treated for Belgium in the period 1953-69, but since only one firm is represented, no industry analysis for this product was possible. The industries that were examined were soft drinks (2 countries), electric shavers (3 countries), gasoline (3 countries), hair spray (1 country), and auto trains (1 country). In those cases where the advertising effect was at all significant - soft drinks, hair spray, and auto trains - the author attributed these findings to the products being in the early stages of their life cycle.

Data was generally gathered from company sources, or in the case of hair spray, from a market research firm. The simultaneity problem between advertising and sales was explicitly treated using two-stages ordinary least squares. Distributed lags were included. Lambin's description of his industry analysis is included under what he calls Finding 22 (pp. 136-38). While it is difficult to infer the exact form of his industry regression equations, the main explanatory variables seem to be absolute advertising and prices, apparently without any income proxy. In addition to his Finding 22 - "Limited empirical support is given to the view that advertising increases primary demand" - Lambin is able to provide a logical underpinning to this result with his Finding 10 - " The order of magnitude and opposite sign of own and competitive advertising coefficients indicate a tendency toward reciprocal cancellation of effects in the markets as a whole."

7. Mendelsohn, Harold and Garrett J. O'Keefe, "Taking a Bite Out of Crime: The Impact of a Mass Media Crime Prevention Campaign," National Institute of Justice, February 1984.

This report attempts to assess the effects of the national media campaign "Take a Bite Out of Crime" (McGruff) on consumer perceptions, attitudes and behaviors. From October 1979 through July 1981, "more than $100 million of documented time and space had been donated, making McGruff one of the most popular Ad Council campaigns."

Based on a national sample survey of 1200 adults, when asked "to describe any one particular recent public service ad that stood out in their memory (unaided recall)," only 3% mentioned these ads. However, when those who (after being prompted) recalled the crime prevention ads are added to the unaided recall group, an estimated 51.7% of the population were reportedly exposed to the ads.

Within the exposed group, 22% (thus 11.4% of the total population) responded affirmatively to the question, "As a result of these ads did you do anything that you probably would not have done before if you hadn't seen or heard them?" Respondents were then asked to specify what actions they took. Actions reportedly taken included getting new locks for a house or locking existing locks (34%) and keeping watch on neighbors and reporting suspicious activity (21%). These two actions were emphasized in the McGruff campaign.

In addition to the national sample, a panel survey of 1,049 adults were interviewed in September 1979, three months prior to the campaign's onset. Follow-up interviews were made in November 1981, with 426 of the original respondents successfully reinterviewed. For these 426 individuals, we have self-reported data on crime prevention behavior and exposure, both before and after the ad campaign. Regressions were run with the independent variable being reported exposure. Statistically significant increases in (1) outdoor lights on, (2) use of timer lights, (3) having neighbors watch, (4) keeping watch on neighborhood, (5) reporting to police, and (6) joining prevention groups, were associated with being exposed to the ad campaign. All of these activities were specifically advocated in the ad campaign. A list of non-advocated behavior each failed to have a statistically significant association with exposure, with most estimated coefficients being near zero or negative. Thus, one can conclude that those individuals who reported their exposure to the ad campaign also reported an increase in campaign-advocated behavior. There is also some evidence that they did not increase and possibly decreased their activities in non-advocated behavior.

This study has the same limitations of any self-reported survey of behavior, in that one cannot fully rely on self-reported actions. Nevertheless, the results are quite suggestive and not easily dismissed. The use of the pre- and post-campaign survey adds to the study's credibility.

8. Sturgess, Brian T. (1982), "Dispelling the Myth: The Effects of Total Advertising on Aggregate Consumption," *Journal of Advertising*, pp. 201-12.

Sturgess used the Box-Jenkins time-series technique to analyze the influence of aggregate advertising on aggregate consumption - a test of the so-called "Galbraithian Hypothesis." Using quarterly data for 1969-80 from the U.K., Sturgess found no support for the Galbraithian Hypothesis that advertising increases consumption relative to saving.

Sturgess applied the analytical techniques of Ashley, Granger, and Schmalensee (1980) to U.K. data. These techniques determine whether one variable "causes" another in a statistical sense. "A variable x is said to 'Granger cause' a variable y if future values of y can be predicted better from the past of x and y together than from the past of y alone." Defining x to be advertising and y to be consumption, Sturgess rejected the hypothesis that changes in advertising caused changes in consumption. A model that included both past consumption and past advertising predicted current consumption worse than one that included only past consumption.

Sturgess's treatment of the direction of causality between advertising and consumption is careful but purely statistical. His study contains no theoretical foundation explaining why advertising does not "cause" consumption. Sturgess emphasized the need for additional, disaggregated research on this issue.

9. Taylor, Lester D. and Daniel Wieserbs (1972), "Advertising and the Aggregate Consumption Function," *American Economic Review*, 62, pp. 642-55.

Taylor and Wiesarbs applied the well-known Houthakker-Taylor state-adjustment consumption model to determine the effects of advertising on aggregate consumption and aggregate saving. The structural form of the H-T model consists of two equations:

$$(1)\quad q(t) = A + B\,s(t) + C\,x(t)$$

$$(2)\quad \dot{s}(t) = q(t) - D\,s(t)$$

where

$q(t)$ = consumption (or saving) in time t

$x(t)$ = income in time t

$s(t)$ = a state variable that captures the effects of past habits and current stocks of non-income variables on current consumption

A, B, C = estimated coefficients

D = depreciation rate of the state variable

Because $s(t)$ is unobservable, Houthakker and Taylor manipulated the model's structural equations to get a reduced form in which current consumption, $q(t)$, depends on past consumption, $q(t-1)$, past income, $x(t-1)$, and the change in income, $(x(t) - x(t-1))$. The structural coefficients A, B, C, and D can be determined from the reduced form coefficients.

Taylor and Wieserbs incorporated advertising by including it as another independent variable in equation (1) above, which becomes,

$$(1)\ q(t) = A + B\, s(t) + C\, x(t) + E\, a(t)$$

where a(t) is advertising in period t per-capita. Taylor and Wieserbs acknowledged that advertising may affect consumption indirectly through the depreciation relationship (equation (2) above) but rejected this hypothesis based on their empirical results.

Using annual U.S. data for 1929-68 except for 1942-45, Taylor and Wieserbs concluded that each dollar of advertising increased per-capita consumption by $4.55 in the short run and $7.95 in the long run. Advertising reduced the steady state long- run saving rate (saving divided by disposable income) from 9.3% to 7.0%, according to Taylor and Wieserbs. These long-run, steady state figures are derived by placing their estimated structural coefficients into a Solow-Swan one sector growth model. Based on these results, Taylor and Wieserbs concluded that advertising clearly affected the aggregate consumption and saving functions.

This study suffers from several drawbacks. First, it is not clear that the H-T model is the appropriate specification of the consumption and saving functions. Taylor and Wieserbs acknowledge that other theoretical structures may lead to different results. Yet, other studies (e.g. Ashley, et. al. (1980)) do not offer a theoretical basis for their conculsions.

Second, the Taylor-Wieserbs approach may not adequately address the issue of causality: does advertising affect consumption or vice versa? If consumption also affects advertising, then models that fail to correct for this effect will obtain upwardly biased estimates of advertising's impact on consumption. Taylor and Wieserbs do attempt to control for simultaneity by using 2SLS with an ad hoc advertising equation. This specification generated a weaker impact of advertising on aggregate consumption (advertising reduced the steady state saving rate from 9.3% to 7.6%), but not enough to alter Taylor and Wieserb's general conclusion that advertising significantly increased aggregate consumption. The smallness of the sample (35 observations) implies that this 2SLS procedure may not have produced unbiased estimates of advertising's effect on consumption.

Third, Taylor and Wieserbs use annual data. Several studies, e.g., Clarke (1976) and Schmalensee (1972), find that between 75 and 95 percent of advertising's impact on sales occurs within one year. This suggests that annual data may be unable to capture the true causal relationship between advertising and sales.

10. Wilder, Ronald P. (1974), Advertising and Inter-Industry Competition: Testing a Galbraithian Hypothesis, *Journal of Industrial Economics*, 23, pp. 215-26.

Wilder selects twenty seven industries based on IRS data, which like Comanor & Wilson (1974), include malt liquor, wine, distilled liquors, and tobacco. He use a simultaneous equation model, but without lags, since he argues that earlier work of his shows that advertising's effect occurs mostly within one year.

He runs the model in both linear and log-linear form but reports only the linear form. Sales, the dependent variables, is measured in dollars. The explanatory variables in the sales equation are relative advertising, absolute advertising, relative price from the wholesale price index series, and personal consumption expenditures from the *Economic Report of the President*. Using a two-stage least squares procedure, he finds that relative advertising has a positively significant coefficient in only one industry - periodicals. Four other industries have a positive and statistically significant absolute advertising effect, but these include none of the specific industries mentioned above. In Wilder's words:

"The findings of this study are not generally consistent with the Galbraithian hypothesis that advertising affects the composition of demand among industries. These findings suggest that total industry sales for most of the consumer goods industries studied here are not significantly responsive either to industry advertising relative to the advertising outlays of other consumer goods industries or to industry advertising in absolute dollar terms."

II. CIGARETTE INDUSTRY

1. Doron, Gideon (1979), *The Smoking Paradox: Public Regulation in the Cigarette Industry*. Cambridge, Abt Books.

Doron's study of the public regulation of the cigarette industry includes a model for the years 1954-1975 that estimates the effects of industry advertising expenditures, the Surgeon General's Report, the Fairness Doctrine, and an index of the price of cigarettes that also includes per-capita disposable income. All of Doron's results were significant. The smallest effect, however, was obtained for industry advertising. At the margin, his results indicate that six dollars had to be spent on industry advertising in order to return one dollar in profits. This result causes Doron to conclude that "Advertising in the cigarette industry is not a means of market expansion but rather a competitive strategy employed by the firms to increase market share," and that "...the ban imposed on the advertising of cigarettes was in the industry's interest." (Pp. 46-47.)

With respect to the other explanatory variables, Doron estimates that the Surgeon General's Report caused a reduction in per-capita consumption of 229 cigarettes per year. The Fairness Doctrine, he estimated, was responsible for a reduction in consumption of 129 cigarettes per year. Although his coefficient with respect to price is negative, it is not readily comparable to results of other studies because of the inclusion in the price variable of a ratio that measures per-capita disposable income. Doron calculates the unusual result that a one percent increase in price would cause an average reduction of about five percent in total sales.

Doron also uses his results to obtain projected effects of the advertising ban on cigarette consumption. He projects that if the ban had not been imposed cigarette consumption would have been eighteen packages per capita less.

2. Hamilton, James L. (1972), "The Demand for Cigarettes: Advertising, the Health Scare and the Cigarette Advertising Ban," *Review of Economics and Statistics*, 54, pp. 401-11.

For the period 1950-1970, this study principally measures the effects on cigarette consumption of industry advertising, the 1964 Surgeon General's Report, and the antismoking commercials fostered by the Fairness Doctrine of 1968.

Hamilton's review of the literature with respect to advertising elasticities indicates that prior studies have shown little consumer sensitivity to advertising. His summary is as follows:

"Schoenberg's (1933) regression advertising coefficient was not statistically significant for 1923-1931, nor was Basmann's (1955) for 1926-1945. Simon (1967) calculated their implied advertising elasticities as only 0.05 - 0.08. Tennant (1950) carefully examined several instances during 1900-1948 when cigarette consumption variations (such as more women smokers) had preceded, not followed, advertising variations. He concluded that the market demand for cigarettes had small advertising elasticity. More recent estimates are few. Though Bass (1969) found significant advertising elasticities ranging from 0.24 to 0.60, his results are suspect. Schmalensee (1972) used similar techniques, and he did not find significant advertising elasticities for 1953-1967. Maier (1955), Sackrin (1962), and Houthakker and Taylor (1970) disregarded advertising." (Hamilton, p. 401.)

Hamilton's own findings with respect to elasticities are consistent with the earlier studies. Long-run elasticities were 0.19 to 0.36; short-run elasticities were 0.03 to 0.05 but not significant at the 5 percent level.

With respect to the 1964 Surgeon General's Report and the antismoking commercials, Hamilton's study indicated that both had depressive effects on cigarette consumption that outweighed the smaller positive effects of cigarette advertising. He estimated that advertising tended to boost per-capita consumption by 95.0 cigarettes per year, while the 1964 report tended to depress consumption by 252.9 cigarettes per year (2.7 times greater than advertising) and the antismoking commercials depressed it by 530.7 cigarettes per year (5.6 times greater.)

Based upon these results, Hamilton, in a further analysis, concludes that the advertising ban would not promote public health. He argues that this effect was likely because the antismoking commercials were more effective in retarding consumption than was cigarette advertising in promoting consumption and because the ban ended the free broadcast time subsidy given to antismoking advertisements under the Fairness Doctrine. He provides some confirming evidence about the effectiveness of the antismoking commericals by noting that the cigarette companies, prior to the Congressional ban on advertising, had volunteered a private broadcast advertising ban, if in exchange, the Congress were to give the companies antitrust immunity to agree on a ban and all federal agencies dropped their proposals for stronger health warnings.

Hamilton noted additional effects of the ban, namely, a reduction in industry advertising expenditures of 20 to 30 percent during the first year following the ban and an increase in industry earnings of about 30 percent for the first six months of 1971 as compared with the same period for 1970.

The model is a single equation regression with per-capita cigarette consumption being explained by per-capita disposable income, the relative price of cigarettes is derived from CPI data, one index of cigarette advertising expenditure in absolute terms and one in per-capita terms, and finally dummies for the two health scares and the Fairness Doctrine. The model was run in both a linear and log-linear form. Lagged effects of advertising were introduced. Because of severe multi-collinearity between the price and income series, coefficients for these variables were estimated using cross-sectional state data.

3. Ippolito, Richard A., R. Dennis Murphy, and Donald Sant (1979), *Staff Report on Consumer Responses to Cigarette Health Information.* Bureau of Economics, Federal Trade Commission.

This study of how consumers responded to the adverse health information about cigarettes found that consumers reacted significantly but gradually to the publication of the Surgeon General's Report in 1964. The authors estimate that actual per- capita consumption was 34 percent less in 1975 than consumption projected in the absence of the 1964 report, mainly because of reduced participation. This reduction in per-capita consumption, taken together with the reduction in average tar and nicotine content that began in 1953, is estimated to have lowered per capita intake of tar and nicotine by 45 percent by 1975.

Although the study found that per-capita consumption in 1953 was approximately 17.6 percent below the level expected, this adjustment, mainly because of reduced intensity of smoking, did not extend beyond 1953 and may have been the result either of the initial publication in *Consumer Reports* of tar and nicotine tabulations or the end of the Korean War. The study also confirms earlier work that economic factors (price, elasticity equal to -.8; income, elasticity equal to .7) have influenced the aggregate demand for cigarettes and concludes that per-capita smoking has exhibited a secular upward trend that is attributed to social factors.

The study notes that per-capita cigarette consumption is a function of both the participation rate and average smoking intensity. The authors estimate that the Surgeon General's report principally affected the participation rate and that the proportion of adults smoking in 1974 was 8 percentage points lower than it otherwise would have been. The study also estimated that start rates have been affected by health information, with the result that the participation rate in 1974 of adults age 29 would have been .479 but actually was only .394, a gain of 8.5 percentage points in the proportion of adults who are likely never to smoke.

The authors also estimate a gain to the life expectancy of 29-year-old adults of about .6 years because of the combined effects of the reduced proportion of smokers since 1964 and of the fall in the average cigarette tar and nicotine content since 1953.

The study found little effect from either the introduction or the removal of the antismoking commercials resulting from the Fairness Doctrine.

4. Lewit, Eugene M., Douglas Coate, and Michael Grossman (1981), "The Effects of Government Regulation on Teenage Smoking," *Journal of Law and Economics*, 24, 545-70.

The authors of this study investigated the impact of the Fairness Doctrine and the advertising ban on the demand for cigarettes by teenagers in the United States. They also present estimates of the responsiveness of smoking by teenagers to variations in the price of cigarettes.

With respect to smoking participation, the study found large and significant price elasticities. These ranged from -.97 to -1.43. The authors note, however, that they were not able to hold constant real family income and proxies for the amount of discretionary income available to the teenagers. The elasticities, therefore, may be overestimates. With respect to the quantity smoked by those who do smoke, the study found price elasticities that ranged from -.01 to -.45. These estimates are also subject to the caution that the authors could not hold income constant as noted.

In their evaluation of the impact of the Fairness Doctrine, the authors found that it had little or no impact on the quantity smoked but did have a significant and negative impact on teenage smoking participation rates. With respect to the effect of the Fairness Doctrine on teenage smoking participation, the study developed seven alternative specifications. For the entire period of the Fairness Doctrine, the authors first estimate that teenage smoking participation was 3.0 percentage points smaller than in the sixteen-month period prior to the doctrine. An analysis of time trends suggests that the Fairness Doctrine had its largest impact in the first year of its existence but was subject to diminishing returns. Also indicated by the regressions is that while the number of hours per week spent watching television has a positive and significant impact on the probability of smoking, this effect is much weaker during the period of the Fairness Doctrine, indicating that the antismoking commercials were significant in reducing teenage smoking participation. Specifically, during the predoctrine period, a one hour per week increase in TV watching raises the smoking probability by 1.1 percentage points. The comparable increase during the doctrine period is .3 percentage points. Finally, with respect to the post-doctrine period in which the advertising ban was in effect, the authors conclude that the ban was not a particularly effective policy instrument but may have been responsible for relatively small declines in smoking participation rates.

Lewit *et al.* use pooled time-series cross-section data provided by the U.S. Health Examination Survey to estimate the demand for cigarettes among teenagers. The period covered is 1966-1970, which permits them to study the impact of the Fairness Doctrine. Each teenager's behavior is represented firstly, by whether he participates in smoking, and secondly, by the quantity smoked, in one of five categories. While these are discrete variables, the authors are satisfied with using an ordinary least squares technique. Prices from state data of the Tobacco Tax Council, dummies representing length of time from the introduction of the Fairness Doctrine, the amount of television watched, along with interaction terms of this with the time .padummies, and the amount of smoking versus antismoking commercials for each year are all considered as explanatory variables.

5. Peles, Yoram (1971), "Rules of Amortization of Advertising Expenditures," *Journal of Political Economy*, 79, pp. 1032-58.

The main purpose of this paper is to determine the duration effect of advertising, but in the course of this, Peles provides estimates of the effect of advertising on industry demand in the cases of cigarettes, beer, and automobiles.

The data used for the cigarette industry are the advertising expenditures in six different media, - newspapers, magazines, spot television, network television, business publications, and outdoor displays. The period covered is 1952-1966. For cigarettes, the advertising expenditures in all the media other than business publications are again used. The period covered is 1952-1968. This information is all gathered from *Printer's Ink* and *Advertising Age*.

Three different models are run for industry demand, with sales always measured in physical units. All models are of the single equation type and of course include distributed lags, since the point is to measure the duration effect. The explanatory variables used in the industry demand runs are advertising in absolute terms, the relative price of the good in terms of the consumer price index, and national private consumption of nondurables.

The author concludes that no industry advertising effect can be found for beer. However, he seems to feel that an industry effect has been found for cigarettes, though a reading of his table A7 does not make it clear why he claims this. Indeed, Schmalensee (1972, p. 116) concludes that Peles has found an advertising effect for automobiles only, though he calls even this effect into question, arguing that Peles has failed to account for the existing stock of cars in his formulation. All in all, Peles finds the national consumer expenditure variable, presumably a proxy for income, to be the most important explanatory variable. Price appeared in both the cigarette and beer results with the wrong sign.

6. Porter, Robert H. (1984), "The Impact of Governmental Policy on the U.S. Cigarette Industry," University of Minnesota.

This work differs from previous ones in that Porter uses a simultaneous equations approach, where not only is a consumer demand equation modelled, but also a producer pricing equation. The method of estimation is two-stage least squares. The data sources for the most part are those used by Schneider *et al.* (1981). The period of time covered is 1947-1982.

Porter reviews the earlier work by Ippolito, Murphy and Sant (1979) and "...finds that their equation does not forecast very well out of sample." He comments further, "An associated problem is that the estimated coefficients are not robust to changes in sample selection. When a similar equation is estimated for the 1947-1982 sample, ...the trend and dummy variables have comparable coefficients, but the price elasticity is much smaller in absolute value and the income elasticity is negative." He concludes that "[t]he problem is that the specification is somewhat arbitrary. The dummy and trend variables explain most of the variation in lnC, yet there is not a good economic justification for the inclusion of the trend variables." (pp. 9-10.)

Porter also finds that the equation used by Schneider *et al.* performs poorly in out of sample forecasts. He criticizes them for the treatment of price as exogenous, as well similar treatment of advertising, low-tar and filter-tip market shares, cigarette tobacco content and the dummy for the Fairness Doctrine. He replaces all of these by instrumental variables. Since Porter finds that the filter market share does not capture the effect of the 1953 health scare, as proposed by Schneider *et al.*, he introduces a dummy for this event.

The results give smaller price and income elasticities than other such time-series analyses, but a larger advertising effect. He finds that as a result of the advertising ban, prices increased 3-6%. This he attributes to greater monopoly power of existing brands, since new brands faced greater barriers to entry. When the effect of the lack of advertising and the rise in price are set against the end of antismoking commericials, Porter finds the ban to have reduced consumption some 3%. Porter cautions, however, mainly because of the specification of his producer pricing equation, that "The quantitative conclusions of this study should be viewed with some skepticism." Most reliable, he notes, are conclusions in accord with previous studies, that is, his demand equation estimates.

7. Schmalensee, Richard (1972). *The Economics of Advertising*. Vol. 80, Contributions to Economic Analysis, Amsterdam, North-Holland.

This work is notable because it contains a critical summary of earlier work in the period 1933-1971, as well as a careful analysis of the cigarette industry. Papers examined in the summary are those of Schoenberg (1933), Meissner (1961), Nerlove and Waugh (1961), Taylor (1968), and Peles (1971). In Schmalensee's words:

"This fairly exhaustive survey of the literature has not produced an impressive list of positive results. Most single-equation models failed to exhibit significant positive advertising coefficients, in spite of the likelihood that these coefficients were biased upwards. The simultaneous equations models discussed above were not much more empirically satisfactory. A variety of functional forms have been employed, but none performed consistently well."

In presenting his own work on the cigarette industry, Schmalensee observes that he chose this industry because good data exist, and because they are available in the form of the number of cigarettes, so that one has a measure of real sales. The data on cigarettes sold were taken from *Business Week* and *Printer's Ink* and covered the period 1955-1967. Advertising data coming from *Advertising Age* were deflated to put them into real terms. Financial figures for the producer advertising function came from *Moody's Industrials*. Schmalensee rejects the Internal Revenue Service *Statistics of Income* as being an unreliable source for time-series, due to firms changing their industry classification. This is particularly interesting because these IRS data are used by Comanor & Wilson (1974) in their controversial study, considered elsewhere.

In order to obtain a consistent estimator of manageable form, Schmalensee eschews two-stage least squares and employs an instrumental variable technique. He also runs ordinary least squares estimations by way of comparison. Six basic models are used to estimate industry demand. Both absolute advertising per- capita and advertising relative to the national average are considered as explanatory variables. Geometric lag structures are permitted.

In none of the variations run was the price effect ever negative and significant. Income coefficients were also insignificant. The bulk of the explanatory power was provided by the lagged dependent variable. Finally, in Schmalensee's words:

"In no case did we find any support for an industry advertising effect, and we were even unable to find any significant impact of advertising on the sales of individual firms. In no case was the advertising of other firms a significant variable."

Because of the rapid adjustment of aggregate advertising to changes in sales, Schmalensee suggests that time-series analysis based on periods longer than a quarter may never satisfactorily treat the effect of advertising on demand.

8. Schneider, Lynne, Benjamin Klein, and Kevin M. Murphy (1981), "Governmental Regulation of Cigarette Health Information," *Journal of Law and Economics*, 24, pp. 575-612.

The authors conclude that previous studies have underestimated the response of consumers to publication of the 1953 report of the American Cancer Society. They find that the primary response to the 1953 health information was a movement by cigarette smokers to filter cigarettes with their lower tobacco-per-cigarette content. By 1964, this resulted in a more than 15 percent reduction in per-capita consumption of tobacco.

The study indicates that the 1964 Surgeon General's Report intensified the consumer movement away from tobacco consumption. By 1971, the two health reports are estimated to have produced a reduction in per-capita tobacco consumption of about 25 percent. The study also indicated that by 1971, the antismoking commercials required by the FCC Fairness Doctrine had further reduced per-capita tobacco consumption by another 5 percent, for a total reduction of 30 percent. Overall, the authors conclude that by 1978 per-capita tobacco consumption was nearly 50 percent lower than it would have been in the absence of the 1953 and 1964 health reports.

In an analysis of the effects of the advertising ban, the authors argue that the policy actually increased the demand for cigarettes. Their reasoning is as follows: (a) given the trivial effect of advertising on aggregate cigarette consumption, the governmental prohibition of broadcast cigarette advertising could not have had any significant effect in terms of reducing demand; (b) the decrease in advertising expenditures led to a lower cigarette price and hence to increased consumption (the estimated price elasticity of demand was significant and negative and equal to -1.2); (c) the ban increased consumption by eliminating the antismoking commercials required by the Fairness Doctrine.

In a further analysis of the advertising ban, the authors conclude that "...the ban substantially increased the cost to firms of introducing new low-tar brands and the cost to consumers of obtaining information about these newer brands, thus slowing down the movement to these lower-tar cigarettes." (P. 610).

The study is novel in its handling of the problem of the income elasticity of the demand for cigarettes. The authors argue that the rapid growth in cigarette consumption in earlier years led to a high predicted income elasticity, so that slower growth in later years shows in the regressions as being caused by the 1964 scare or the advertising ban. They find it plausible, however, that, the income elasticity has changed over time, as cigarettes have switched from being a luxury to being a necessity.

They criticize Hamilton (1972) for using extraneous cross-sectional estimates of income elasticity to treat this problem. They handle it by introducing an income instrumental variable, reflecting a critical income threshold after which people switch from other forms of tobacco into cigarette consumption. Because this is highly collinear with the income variable, they replace the coefficient of the latter in their cigarette demand equation with the value determined from a separate tobacco demand equation.

They also criticize previous treatments of the health scares and advertising ban, arguing that these cannot be adequately treated with simple dummy variables. Since they hold that the main effect of the ad ban must work through a decreased productivity in the stock of advertising capital, they introduce this effect directly into the regression. Since it is their feeling that the 1953 health scare may have led to a rise in filter-tip market share, while the 1964 health scare may have affected low-tar cigarettes similarly, they also introduce these effects directly into the regression. To capture the remainder of the effect of the health shocks, they include a term representing tobacco per cigarette. In addition to all this, they include the real price of cigarettes and per-capita income as explanatory variables, as well as a dummy for the Fairness Doctrine. The data sources they list on p. 610-613 of their article are noteworthy for their diversity.

III. ALCOHOL INDUSTRY

1. Atkin, Charles, Kimberly Neuendorf and Steven McDermott, (1983) "The Role of Alcohol Advertising in Excessive and Hazardous Drinking," *Journal of Drug Education*, 13, pp. 313-26.

This paper reports the results of a survey of 1200 young people (12-22 years old). They were asked a series of questions concerning attitude towards drinking, brand awareness, and alcohol consumption patterns. They were also asked about their media viewing habits, in order to construct an index of exposure to alcohol advertising. The authors report that those individuals with higher advertising exposure rates report higher consumption and more hazardous drinking (e.g., driving) than those with lower advertising exposures.

The survey suffers from some potentially serious methodological flaws. For example, as a measure of consumption, the interviewees were asked how many drinks they normally have, without distinguishing between the types of drink. They report that the high exposure group averages 4.5 drinks at a party or bar, whereas the low exposure averages 2.9. One possible explanation could be that the low exposure group drinks more hard liquor and less beer and wine. It is conceivable that one effect of television advertising is to convince hard liquor drinkers to switch to beer and wine. Such a hypothesis would also be supported by this data. A second example is the finding that high exposure individuals are more concerned about their drinking habits than members of the low exposure group. The authors cite this result as evidence that advertising promotes excessive drinking in teenagers. However, one could just as easily use the .padata to support the opposite hypothesis that advertising promotes sociable drinking and not excessive deviant behavior.

Another problem with this study is the inability of the reader to reconstruct the exposure variable. The authors used some weighted scheme that included the amount and type of media exposure, "the attention paid to general categories of alcohol ads encountered in the media..., frequency of exposure to each of nine specimen ads pictured in questionnaire... and degree of attentiveness to the nine ads." Only the first measure - amount and type of media exposure - appears to be a reliable index of media exposure. For example, the researchers apparently infer intensity of exposure by assessing the subject's attentiveness to specimen ads. It is quite possible that their inferences are exactly opposite from that which they are trying to measure. Individuals who have never been exposed to the ad before may be more attentive than those who have seen the ad many times in their home before the survey.

The authors reportedly conducted a regression analysis, but do not specify the variables or form of equations estimated. They claim that the exposure index is a significant predictor for both consumption and hazardous drinking. Unfortunately, they do not provide enough information to analyze this claim, even if their measure of exposure was accurate.

Finally, the authors report on a study of individual responses to questions about different advertisements. This is an attitudinal study, and is thus not considered here.

2. Atkin, Charles, and Martin Block, (1980) "Content and Effects of Alcohol Advertising," *Final Report submitted to Bureau of Alcohol, Tobacco and Firearms, Federal Trade Commission, National Institute on Alcohol Abuse and Alcoholism, and Department of Transportation.*

Summary and Critique

Introduction

The Atkin and Block study comprises seven separate reports commissioned by the Bureau of Alcohol, Tobacco, and Firearms, the Federal Trade Commission, the National Institute on Alcohol Abuse and Alcoholism, and the Department of Transportation. The seven reports are: (1) advertising placement and alcohol consumption statistics, (2) content analysis of alcohol advertising, (3) field survey on the effects of exposure to alcohol advertising, (4) self-report survey on how advertising influences orientation towards alcohol, (5) study of individual responses to selected advertisements, (6) experimental study of respondent's evaluations of various components of advertising content, and (7) study using self-report diaries in which respondents describe responses to advertising seen the previous day. All but one of these reports, the field survey on the effects of exposure to alcohol advertising, are largely irrelevant to the issue at hand. We are concerned with the impact of advertising on consumer behavior. It is Atkin and Block's field survey which attempts to address the issue of behavior, the other studies being concerned with impressions and attitudes.

The major thrust of Atkin and Block's field survey is their finding of a positive relationship between "exposure" to alcohol advertising and alcohol consumption. The survey was administered to 1,227 people, mostly young respondents between the ages of 12 and 22. Quota sampling was used to provide a "typical cross-section of young people in terms of age, sex, social status, race, community size and other dimensions." In addition, the sample included a small proportion of adults 23 years and older. The relationship between exposure to alcohol advertising and alcohol consumption is primarily documented in the form of comparisons between the mean amount of alcohol consumed by those respondents reporting low exposure to ads and the mean amount consumed by those respondents reporting a high exposure to ads for alcohol. Their results show a 20 to 50 percent higher mean level of alcohol consumption among those people who reported a higher degree of exposure to advertising. Some multivariate regression results are reported in a preliminary draft which were omitted from the final report. These results also seem to indicate a positive association between advertising exposure and consumption of alcohol, controlling for certain demographic characteristics.

Comments

There are serious problems with the Atkins and Block study that make it entirely inconclusive in regard to the effect of alcohol advertising on overall alcohol consumption. The authors themselves make a number of caveats at the outset: "A major disadvantage of this design is the inablility to infer cause and effect. . . . It is possible that reverse causation may be operating (e.g., drinking may cause exposure, rather than exposure causing drinking), or that the two variables are related because of some common outside forces (e.g., both exposure and drinking are jointly the result of growing up in a home where the parents frequently drink alcohol)." Atkins and Block also note that they are relying on reported behavior rather than observed behavior, and hence there is the potential for measurement error which would distort the findings.

In fact, not only are Atkin and Block's caveats important in and of themselves, but there are further problems with the study that reenforce the need for those caveats. There are five major areas of difficulty: (1) the sampling technique is problematic, (2) observations are based on self-reporting by respondents to a great extent, (3) the measures of the principal variables, exposure and consumption, are extremely poor, (4) the issue of causality is inadequately addressed, and (5) the statistical methodology lacks rigor. I will address each area in turn, although it should be noted that they are inter-related.

First of all, the sampling procedures used by Atkin and Block may well lead to biased results. The major source of the young respondents was junior and senior high schools, while colleges and technical or trade schools were the major sources of young-adult respondents. In order to also sample from those respondents not in school, other means were employed: newspaper classified advertising, direct mail to randomly selected households, and shopping mall interceptions. To obtain a supplemental sample of adults over 23, social clubs members were used. Among the problems with this mode of sampling are biases introduced by self-selection in the case of newspaper advertising, the disproportionate number of college students, the likely unrepresentative nature of the sample based on social clubs, and the unrepresentative nature of the sample based on shopping mall interception. The critical difficulty here is reflected in the following discussion by Donald Strickland in his critique of the Atkin and Block study:

> . . . 535 adult respondents who had consumed alcohol within the past month represents over 95% of the 562 adult respondents from the field survey, an extremely large percentage of recent drinkers. Recent national surveys have consistently found that approximately 32-35% of the adult population are abstainers (Hyman et al., 1980). Thus, the master sample and several subsamples used in the substudies contain exceptionally high proportions of drinkers, most likely because of self-selection bias as well as the disproportionate number of college students in the adult sample. [Strickland, Donald E., "Content and Effects of Alcohol Advertising: Comment on NTIS Pub. No. PB82-123142", *Journal of Studies on Alcohol*, vol. 45, no. 1, 1984, page 91.]

A second area of concern is a general one having to do with the data observations being largely self-reported by respondents. The problem here is that both the advertising measures and the consumption measures are variables that are not directly observed by the researchers, but rather depend on the respondents' recollections, perceptions, and truthfullness for accuracy. It is well known in the social sciences that this type of data is of questionable reliability as a measure of behavioral response. Simply put, there may be a big difference between what people do and what they say they do. This problem is especially acute when dealing with such a value-laden issue as alcohol consumption. People have a variety of incentives to believe that their consumption is different from what it actually is, and hence self-reporting of that consumption should be viewed with some caution.

This brings us to a third, and more specific area of concern: the way in which the principal variables are measured. The biggest problem lies in the measure of exposure to alcohol advertising. This measure is a hodgepodge of various unrelated "indices", none of which is, by itself, a satisfactory measure of exposure to alcohol advertising. The notion that adding together a set of unsatisfactory measures will lead to a satisfactory measure is not well founded. Two different measures of exposure are used, one for hard liquor and one for beer and wine. The measure of exposure to beer and wine advertising comprises six subindices: (1) the total number of hours that the respondents report watching sports events and weekend sports shows on television between 8 and 11 p.m. on an "average day"; (2) a measure based on the respondent's frequency of reading 10 magazines multiplied by a weight reflecting the average amount of alcohol advertising per month in each magazine; (3) a measure of attention to ads in magazines based on the question: "Of all the beer and wine ads that you see when you're reading magazines, about how many do you look at for more than 5 seconds"; (4) a similar measure of attention to television ads which asked respondents the proportion of beer and wine advertisements that they "watch all the way through"; (5) a measure of how many times in the last year (my emphasis) respondents recalled seeing any of four beer advertisements; and (6) the number of times that respondents reported having seen five other advertisements or any other ads for the same brand in the past year. The indices for liquor are similar.

The first two subindices suffer from self-selection and self-reporting problems. That is, it is quite possible: (1) that heavy drinkers are more likely to watch sports shows and read magazines with a lot of alcohol ads (in fact, this is almost certainly the reason that alcohol ads are placed there), and (2) that heavy drinkers are more likely to say that they watch a lot of sports shows and read certain types of magazines. This means that to extrapolate about the effect on alcohol consumption using these indices as measures of advertising exposure is next to impossible. Tastes in alcohol consumption, sports shows, and magazines are likely to be all jointly determined by other factors, and there is no reason to think that the effect of alcohol advertising is being captured here. Furthermore, as Strickland notes:

> Whether these 10 magazines are the ones most read by the respondents is immaterial to the computations, and the fact that even individuals who report reading none of the magazines included may

read others containing alcohol advertisements is ignored." [Strickland, op. cit.]

The last four subindices all suffer critically from the self-reporting problem discussed earlier. In each case the respondents are essentially asked to evaluate their own exposure to alcohol advertisements. The measures rely completely on the recall of respondents, and given that one would expect serious drinkers to pay more attention to advertising than would casual drinkers, a correlation between these measures and drinking is not surprising. Again, however, these variables are measuring the attentiveness of the respondents to alcohol advertising, which is in no way an unbiased measure of exposure to advertising. In sum, even if nothing else were a problem in this study, the measure of exposure to advertising is so biased that its observed positive relationship with consumption could not be considered indicative of any relationship between actual exposure to advertising and actual consumption. It should also be reiterated that the alcohol consumption variables suffer from being self-reported as well.

This leads us naturally to the fourth area of concern, that of causality. This is touched upon by Atkin and Block, and is related to the shortcomings both of using cross-sectional data and of the measures employed. In any cross-sectional study, one in which all observations are taken at the same point in time, attributing causality is technically impossible. Nevertheless cross-sectional results showing an association between two variables are often used in support of hypotheses about causal relationships. This is most reasonable when there is a solid theoretical reason to expect that causation should work principally in one direction. A good example of this would be the relationship between household income and household consumption expenditures. It would make very little sense for household income to depend on household consumption expenditures rather than the other way around. In the case of the positive relationship between advertising exposure and consumption of alcohol, attributing causality based on theoretical considerations might be done with some degree of confidence if one were able to in fact measure advertising exposure and alcohol consumption objectively and control for other factors. The major difficulty here is that the measure of exposure is far from objective and lends itself to a very plausible theory of reverse causation. In other words, given that the study is cross-sectional, one cannot determine causality from the data, and given the measures employed, one theory of causality is as good as another. There is no more reason to conclude, on the basis of Atkin and Block's results, that exposure to alcohol advertising causes increased consumption, than there is to conclude that the more alcohol one consumes, the more one is likely to obtain exposure to alcohol advertising.

In discussing causality, it should be pointed out that a positive correlation between two variables can be accounted for by other factors, and it is not necessarily the case that there is any causal relationship whatsoever. It may be the case that both exposure to alcohol advertisements and alcohol consumption are determined by preferences formed in early childhood, for example. Although some attempt was made to control for this in Atkin and Block's preliminary regression models (which were not published with the final reports), it is not at all clear that the relevant variables were included in the analysis.

The final area of concern has to do with the statistical analysis employed by Atkin and Block. The major results of the study are given in the form of comparing the mean amounts of alcohol consumption for those who scored above the median for exposure to advertising to those who scored below the median. Although the differences are statistically significant according to Atkin and Block, this type of comparison is not as useful for measuring the strength of a relationship between two variables as a correlation coefficient would be, nor does it control for the effects of other factors as regression coefficients would. The preliminary study which went unpublished did include correlation coefficients and regression coefficients. It is worth noting that while the degree of correlation is moderately high (.41) between exposure and liquor consumption, the correlation coefficients relating exposure to beer and wine consumption are quite low (.24 and .12, respectively), suggesting a relatively weak relationship. The regression coefficients, controlling for selected demographic variables, are somewhat lower for all three types of alcohol consumption. The preliminary study gives no significance tests in the regression and correlation tables, which brings into question the validity of the results. Martin Block has stated (telephone conversation), however, that virtually all the coefficients reported were statistically significant.

Conclusion

The Atkin and Block study is, by its own admission, an exploratory study that was not meant to be a rigorous test of any hypothesis. Because of the nature of the study, the sampling technique, the ways in which the measures of exposure to advertising and alcohol consumption were constructed, and the statistical analysis employed, it is impossible to make any meaningful statements about the effect of alcohol advertising on alcohol consumption based on Atkin and Block's results.

3. Blane, H.T. and L.E. Hewitt (1977), *Mass Media, Public Education, and Alcohol: A State-of-the Art Review*. Chapter 4: "Alcohol and Advertising," prepared for NIAAA.

The authors review the literature on alcohol advertising and consumption. First, they look at the evidence concerning the effect of advertising on sales. They state that none of that literature can "aid us much in determining the effect of advertising on total consumption levels, let alone its effect on abusive or nonabusive consumption." Instead, most of the studies cited are concerned with the effect of advertising on the sales of one brand. Later, however, they conclude that "Generally speaking, it appears that advertising is not a primary factor in raising consumption levels of packaged goods like alcoholic beverages, but it may nonetheless have considerable influence in maintaining levels."

Next, they survey the marketing research literature. They state that "advertising by the alcohol industry aims at increasing sales by attracting three types of purchasers: completely new buyers, new-to-the-brand buyers, and brand-loyal customers. It also attempts to increase the level of purchasing among brand-loyal buyers and to decrease the number of these old customers who switch to other brands." Generally, they find that a 20 year old "'industry principle' not to attempt to increase percapita consumption, to convert nondrinkers to drinkers, or to sell to minors," is still operative. For example, they cite a marketing service that suggests targeting ads to segments of the population that tend to be heavy users. But this approach is also consistent with the brand-switching theory, i.e. that total consumption is not affected.

The third section of their review analyzes the content of television and other media programming. They cite several sources indicating a high frequency of alcohol drinking or other references to alcohol, from 1.4 to 4.0 alcohol "events per hour on television. One study found alcohol was consumed or mentioned on 81% of daytime soaps and 83% of prime time shows. Beer and wine commercials are less frequent (from 4 to 13 times less), yet they have a longer duration per "event". At the time of their review, only about 3% of all alcohol messages were public service announcements. Blane and Hewitt contend that it is impossible to assess the effect of these alcohol references on alcohol abuse. One can argue that a good deal of the programming helps to delineate socially acceptable and unacceptable behavior. Or, they may reinforce "attitudes conducive to indiscriminate consumption." They conclude that "clearly much more research is needed before one can say with any degree of certainty that alcohol programming increases alcohol consumption."

Next, Blane and Hewitt review the existing literature on advertising bans. They cite the lack of any changed consumption patterns as a result of two partial advertising bans in Canada. However, since these were partial, local bans and were for relatively short periods of time, it is not possible to extrapolate these results to total advertising bans. They also cite several cases where homogeneous package goods are sold without any advertising. Alcohol consumption in the Soviet Union "has risen steadily since 1957, despite price increases and restrictions on times of sale and amounts purchased," and a total advertising ban. "A similar phenomenon ocurred in the United States during Prohibition..." They also cite the successful marketing of Hersheys candy bars despite the fact that they spent nothing on advertising until 1969. The case of cigarette ad bans is slightly different, with some studies suggesting total consumption growth may have been dampened by media ad bans. One study goes as far as to estimate a 5% drop in consumption if a total ad ban on cigarettes was instituted (Simon, 1970). However, this estimate is highly speculative and the author himself has many reservations about its use. Finally, Blane and Hewitt mention a possible adverse effect of an ad ban, namely a "heightening ambivalence about alcohol, that may increase alcoholic casualties."

Blane and Hewitt also consider the "economic effects" of an ad ban, by which they mean who will gain and lose from a ban (e.g. ad agencies, alcoholic beverage retailers, etc.). However, these are equity issues, none of which relates to the merits of an ad ban as a means of controlling alcohol abuse.

After concluding that an advertising ban is not a particularly worthwhile remedy to the problem of alcohol abuse, Blane and Hewitt examine a few alternatives. One possibility is to use tax incentives/disincentives to make alcohol advertising more expensive. Another potentially promising route is industry self-regulation. They cite the NAB's "family viewing time" rule designed to reduce sex and violence during family hour viewing. This rule alone reduced the number of drinking scenes during these hours. Finally, they discuss public service announcements (PSA) or countercommercials. Although the experts are divided on the effectiveness of existing PSA's, they are potentially an important remedy in reducing alcohol abuse.

4. Bourgeois, Jacques C. and James G. Barnes (1979), "Does Advertising Increase Alcohol Consumption?" *Journal of Advertising Research*, 19, pp. 19-29.

The authors are interested in the effect of various controllable market variables, including print and broadcast advertising, on the per-capita consumption of alcohol in Canada. They select the period 1951 to 1974 and examine absolute alcohol consumption, as well as the categories of beer, wine, and spirits. Other controllable variables considered are prices, taxes, the number of liquor stores, the minimum drinking age, and the introduction of the breathalyzer.

The paper begins with a convenient literature summary, broken down by the effect of each type of controllable variable on alcohol consumption. The model they themselves formulate is both longitudinal and cross-sectional, since they consider each of the ten provinces of Canada separately. They emphasize deficiencies in their data, particularly the advertising measurements. Extensive interpolation and extrapolation is required in order to obtain a complete data series.

In addition to the controllable variables mentioned, the authors include a large number of semicontrollable and noncontrollable nonmarketing variables, selected after a principal-components analysis, but for which results were not reported. Their estimation precedure is similar to that of Lambin (1976), being in log-linear form. Variables significantly correlated to time were so regressed, and only the residuals were used as variables. Four functional forms were finally selected.

Their results yield a bewildering array of effects of aggregate advertising on the consumption components. For instance, while print advertising for alcoholic beverages in general is found to have a significantly positive effect on beer consumption, it has a significantly negative effect on spirits consumption. This indicates strong interrelationships between beer, wine, and spirits. It thus seems inappropriate that advertising should be aggregated across all three products when individual products are considered.

When regressed against total per-capita alcohol consumption, there was no significant effect of either print or broadcast advertising. It is felt that this model is more reliable than those for individual consumption categories. Prices, on the other hand, were found not to be of signifiance, though taxes were. The number of liquor stores available was also not significantly related to per-capita alcohol consumption, but the minimum drinking age and the introduction of the breathalyzer were positively related. It is speculated that the peculiar sign obtained for the latter might have resulted from the induced increase in home consumption of alcohol. In their final summation Bourgeois and Barnes state:

> Thus this study produced little evidence to support the claim that the level of per-capita consumption of alcoholic beverages in Canada is influenced by the volume of advertising for these products.

-5. Duffy, Martin (1982), "The Effect of Advertising on the Total Consumption of Alcoholic Drinks," *Journal of Advertising*, pp. 105-17.

This paper is similar in terms of methodology and data sources to the work of Hagan & Waterson (1983). Quarterly aggregate time-series data are used for the period 1963 to 1978 in order to estimate demand for alcoholic drink in the UK. In addition to overall alcoholic drinking, separate demand functions for beer, wine, and spirits are estimated. This was motivated by the fact that the various type drinks appear to have substantially different price and income elasticities. According to the author, this may account for the difficulties McGuiness (1980) had in obtaining a stable estimate of the effect of aggregate alcohol price on aggregate alcohol consumption. While McGuiness also ran estimates with disagregated advertising, Duffy criticizes him for not also disaggregating the other variables.

The model is of the log-linear form, with prices, income, and advertising as the explanatory variables. Unlike Hagan & Waterson (1983), no lagged dependent variable is included, since in a previous paper, the author found no significant lingering effect of advertising upon consumption. Rather than seasonally adjust the data, Duffy uses seasonal dummies. He runs both ordinary least squares and two-stage least squares, though the results do not vary greatly between the two. For the latter, he specifies firm advertising expenditures in the manner of Schmalensee (1972).

For alcoholic drink in general, both income and price are significant and of the expected sign, with demand being price-inelastic and income-elastic. Advertising on the other hand has no significant effect. In the individual categories, Duffy finds that spirits and wine have a high income elasticity, being luxury goods, and that price has the correct negative sign. It is still the case that advertising has no effect on either of these goods. For beer, on the other hand, income has a lesser effect, while price becomes of the wrong sign, though insignificant. What is more, beer appears to be significantly affected by advertising. Duffy finds, however, that this beer equation is unstable, leading him to suspect a structural shift. He therefore reruns the model over the period 1971 to 1978. While he obtains results for spirits and wine that are much as before, the beer equation now has advertising being insignificant, with income and price significant and of the expected signs.

Duffy ends with an interesting thesis: that eliminating advertising might lead to lower prices and hence higher consumption, if firms being unable to compete through advertising, resort to greater price competition.

6. Hagen, L. W. and M. J. Waterson (1983), *The Impact of Advertising on the United Kingdom Alcoholic Drink Market*. The Advertising Association.

The booklet begins with a brief survey of prior research as to the effects of advertising on the economy in general, and the alcohol and cigarette industries in particular. All the citations mentioned by Hagen and Waterson support the notion that advertising has little effect on consumption at these levels of aggregation.

Hagen and Waterson continue with their own single equation regression of factors influencing alcohol consumption in the United Kingdom over the period - 1961-1980. They run their model both for combined alcohol products and for the separate components beer, spirits, and wine. The independent variables are price, income, advertising, and atime trend. For advertising data, they simply uise expenditures in the television and print media, deflated and in per-capita terms. A lagged independent variable is included, since they assume a decay rate in advertising stock of '.7. The dependent variable is measured as expenditure in real terms. The model they fit is of the classical log-linear type. By using quarterly data they partly relieve the advertising-sales simultaneity problem. Because of a marked seasonal pattern in this quarterly data, they also employ a seasonally differenced model, in addition to the classical one.

For their combined alcoholic products model, they obtain that both price and income are significant and of the expected sign, using either the classical or seasonally differenced form. Advertising stock, however, is never significant. They conclude that advertising plays no discernable part in alcohol consumption in the short or medium term. For their individual sectors, the main differences are that price is not significant in the wine model and income is not significant in the beer one.

7. Intriligator, Michael D., Hossein Salehi and Stuart O. Schweitzer (1983), "Alcoholism: An Econometric Model of Its Causes, Its Effects and Its Control," in *Economics and Alcohol*, edited by Marcus Grant, Martin Plant and Alan Williams, Gardner Press, New York, pp. 107-27.

This paper is an econometric analysis of alcohol consumption and alcoholism in 35 states in 1975. The authors specify demand functions for four variables - beer consumption, spirits consumption, alcoholism and alcohol-related mortality. Explanatory variables include income, tourism, urbanization, temperature, religion, consumption of wine, price of beer, price of spirits, number of outlets, minimum drinking age, alcoholism rehabilitation expenditures, unemployment and advertising. The advertising variable was a zero-one dummy depending on whether or not any alcohol advertising (beyond the national media) was permitted in the state. The model is simultaneous, in that all four dependent variables are treated as though they are also dependent on each other. For example, a higher price of beer may directly decrease beer consumption, but may indirectly increase spirit consumption by lowering its relative price. Furthermore, the net effect could be an increase *or* decrease (or no change) in the alcoholism rate. In a simultaneous model, these net effects can be estimated.

According to their estimates, "a prohibition on advertising for alcoholic beverages leads *not* to a general reduction in alcoholic beverage consumption but rather a *shift* from beer consumption to spirits consumption." On balance, however, they estimate that banning advertising in a state would reduce alcoholism by 15%, although it would *increase* the mortality rate slightly (less than 1%). The increased mortality rate appears to be the result of the increased consumption of spirits.

They found little change in alcoholism rates due to a change in the minimum drinking age, outlets per capita or rehabilitation expenditures. However, price and unemployment did have significant effects.

It is important to realize the limitations of this analysis for assessing the impact of advertising on alcoholism. A ban on advertising in a state primarily affects price and availability. Local retail advertising enables firms to inform consumers about and compete on the basis of price, location, hours of operation, stock, etc. This is very different from the advertising that is done on television at the national level. Thus, a ban on local advertising is likely to reduce competition and raise price. It is not clear that such an effect would result from a national ban on advertising.

Further, the authors do not control for state restrictions on the sale of alcohol. State restrictions may include ownership (e.g., state-owned stores; the number of stores an individual can own), hours of operation, location, etc. Presumably, these restrictions are highly correlated with advertising bans. The author's ad ban variable may even be serving as a proxy for state restrictions. This is consistent with other studies that suggest the availability of alcohol is an important predictor of consumption.

One final comment on this article concerns their comment that "average statewide consumption has no significant effect on either alcoholism or alcohol-related mortality." This is an important point to keep in mind, since most empirical studies have looked at per-capita consumption. Although the average consumer may be price sensitive or tend to respond to advertising pitches (at least in the short-run), this may not be true for the alcoholic, or the person predisposed to this disease. Unlike many other studies, this paper looks at alcoholism and mortality directly.

8. Kohn, Paul M. and Reginald G. Smart (1984), "The Impact of Television Advertising on Alcohol Consumption: An Experiment," *Journal of Studies on Alcohol*, 45, pp. 295-301.

Kohn and Smart conducted a controlled experiment to measure the impact of beer advertising on beer consumption during the period of television viewing. Two variables were controlled during a two hour period: (1) the frequency of beer commercials (0, 4, or 9) and (2) the access to beer (either immediate or delayed half an hour). The 125 male, college aged subjects watched an indoor soccer game ostensibly to evaluate its potential fan appeal.

> The results of this experiment suggest that limited exposure to televised beer commercials briefly stimulates beer consumption... However, further exposure does not seem to contribute to further consumption. In fact, over the course of the experiment as a whole, amount of advertising exposure had no significant effect on consumption. Delayed access to beer led to compensatory consumption when the beer became available. The final result was that the delay had no effect on the consumption of beer over the experiment as a whole.

9. Kohn, Paul M., Reginald G. Smart and Alan C. Ogborne (1984), "Effects of Two Kinds of Alcohol Advertising on Subsequent Consumption," *Journal of Advertising*, 13, pp. 34-48.

The authors report on an experiment designed to test the effect of beer advertising on consumption of alcohol. Their subjects were males aged 19-45 who indicate they drink alcohol. Individuals were contacted at a shopping mall and (under the guise of marketing research) asked questions about either various ads for one brand of beer or unrelated questions about the shopping mall (as controls). Participants were given food vouchers to be used at a nearby restaurant. Their alcohol consumption was monitored (without their knowledge) and supposedly unrelated market research interviews were conducted 6-12 weeks later by phone. The results indicated no short-term or long-term change in alcohol consumption or in brand loyalty.

10. McCarty, D. and J. A. Ewing (1983), "Alcohol Consumption While Viewing Alcoholic Beverage Advertising," *The International Journal of the Addictions*, 18, pp. 1011-18.

McCarty and Ewing conducted a controlled experiment, with 112 subjects, to test three hypotheses: (1) does alcohol advertising induce consumption? (2) does alcohol advertising prompt faster drinking? (3) are drinkers more influenced by alcohol when they are drinking? McCarty and Ewing concluded that "alcoholic beverage advertisements did not increase either the quantity of liquor poured in mixed drinks or the rate of drinking." The setting employed by this study was so contrived - subjects viewed and discussed slides of ads for 30 minutes after mixing one drink and before mixing another - that generalizations to actual behavior become suspect.

11. McGuiness, Tony (1980), "An Econometric Analysis of Total Demand for Alcoholic Beverages in the U.K., 1956-1975," *The Journal of Industrial Economics*, 29, pp. 85-109.

As the title suggests, this work investigated the economic factors influencing alcohol consumption in Great Britain over the period 1956-1975. Consumption was measured both in terms of expenditure and volume of alcohol consumed. As with any study reporting the quantity of alcohol consumption, the individual types of drinks - beer, spirits, wines, and ciders - were weighted by their alcoholic content before being aggregated. The explanatory variables considered were the real price of drink, real income per capita, advertising, the number of licensed premises, and a time trend. Aggregate advertising, which covered the press and television only, was employed in some estimations, whereas in others advertising was broken into individual components by the type of drink.

The model selected was a single equation regression equation, run in both a linear and semi-logarithmic form. Because the author found little evidence that current consumption is influenced by past advertising, he chose not to include a lagged dependent variable. Ordinary least squares was used, with all variables in first differenced form, to overcome multicollinearity problems. At a later point, the author reformulated the model to account for the possibility of simultaneity between advertising and sales. In doing this, he used price of an advertising message per adult and the interest rate, two factors in the advertising equation, to form an instrumental variable. This replaced spirits advertising in the demand equation, which he again estimated by ordinary least squares.

The results McGuiness obtains for total alcohol consumption indicate that price is significant and of the expected sign, though he finds it unclear whether income is also a significant factor. The most strongly significant factor is found to be the number of licensed premises. While he cannot be sure of the causality between pubs and sales, he argues that there is a considerable lag in opening a licensed premise, so that the measured coefficient presumably reflects the effect of the existing number of locations on alcohol consumption. Finally, McGuiness concludes that spirits advertising has a significantly positive impact on alcohol consumption, though advertising for other type drinks had no significant effect. The elasticity of alcohol consumption to spirits advertising is estimated to be about .2. For advertising in general, McGuiness finds that in 1975 a 1% reduction in advertising would have reduced alcohol consumption between .2 and 1.0 fluid ounce per adult.

12. Ogborne, Alan C. and Reginald G. Smart (1980), "Will Restrictions on Alcohol Advertising Reduce Alcohol Consumption," *British Journal of Addiction*, 75, pp. 293-96.

This article analyzes data from two separate sources in an attempt to measure the effect of alcohol advertising restrictions on consumption. The first data set concerns beer consumption in Manitoba, Canada from 1970-1977. Manitoba banned all beer advertising from electronic and print media in 1974. A time-series analysis of monthly sales showed an increase over time, the same increase as was found in Alberta, where no ad ban was in effect.

One of the problems with the Manitoba data is that other factors may not have been adequately controlled. Although the authors claim that per-capita consumption and alcoholism rates are similar in Manitoba and Alberta, a more careful analysis would specify and estimate the determinant of demand for beer before and after the ad ban. Smart and Cutler exclude all other economic variables likely to influence beer consumption: price, income, prices of related goods. It is also possible that demographic changes increased consumption and overshadowed any decrease due to the ad ban. Furthermore, since wine and distilled spirits were still being advertised in Manitoba, even a properly conducted study would not be able to assess the effects of a total ad ban. Finally, the Manitoba government was unable to control advertising that originated outside the Province. It is quite possible that beer commercials in adjacent provinces were substantially increased.

The second data set involves per-capita consumption of alcohol and alcoholism rates for each state in the U.S. States were classified by the degree of advertising restrictions, degree of urbanization, income and availability of alcohol. Linear regressions were run with the dependent variables being per- capita consumption and alcoholism rates. Advertising restrictions accounted for no statistically significant variation in either per-capita consumption or the alcoholism rate. Total consumption, urbanization and availability were positively correlated with alcoholism. Income and availability were positive predictors for per-capita consumption.

Although this latter study supports the hypothesis that advertising restrictions have little effect on consumption, it is possible that state restrictions are simply ineffective. Again, the problem of adjacent states and national advertising has not been addressed. One important finding of this study, however, is that state restrictions on the availability of alcohol can have a significant effect on consumption and alcoholism.

13. Whitehead, Paul C. (1983), "Is Advertising Effective? Implications for Public Health Policy," in *Evaluation Research in the Canadian Addictions Field*.

Whitehead reviews the advertising literature to question whether government sponsored advertising should be the vehicle to influence consumer use of alcohol. Whitehead states that "there is little evidence that advertising campaigns have thus far enjoyed much success as parts of efforts to change behaviour in a manner considered consistent with the primary prevention of alcohol-related damage. If such campaigns are to be used it might be worthwhile to consider how they might fit into a larger marketing strategy and by taking into account some of the known limitations that can be derived from advertising research generally."

Whitehead notes the correlation between alcohol advertising and alcohol sales over the past twenty years, but also states that "a causal link between these two phenomena has not been demonstrated." Whitehead makes a general statement "that advertising can successfully be used to alter market share and/or total demand under certain circumstances." Yet, he presents no evidence that these circumstances exist in the alcohol industry, despite his contention that they do exist. This survey contains no original research on the advertising - alcohol issue. Whitehead acknowledges the controversy between those who find a link between alcohol advertising and consumption, and those who do not.

14. Whitehead, Paul C. and Barbara Szandorowska (1977), "Introduction of Low Alcohol Content Beer," *Journal of Studies on Alcohol*, 38, pp. 2157-64.

The authors surveyed 76 people who had recently purchased a newly introduced low alcohol beer ("Cool Spring") at the manufacturer's retail outlet in Ontario. Of particular interest was whether consumers purchased the new product to *replace* consumption of stronger beer, to *increase* the situations at which alcohol was consumed, or to become *new* alcohol drinkers. In most (87%) cases, consumers used Cool Spring as a substitute for stronger beer. After noting the possibility that less alcohol may have been consumed by these people, Whitehead and Szandorowski emphasized the finding that 11.3% of the "drinking occasions" involved using Cool Spring where no alcohol had been previously used.

This study, unfortunately, made no attempt to determine if the *quantity* of alcohol consumed changed when consumers substituted low alcohol beer for other beverages. Absent the latter piece of information, statements regarding the level of alcohol consumed due to the introduction of low alcohol beer remain purely conjectural. A ban on alcohol advertising could make it more difficult for new products, such as low alcohol beer, to penetrate the market. This study does not address whether the introduction of such products increases or decreases alcohol consumption.

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Mr. WIRTH. Thank you very much, Mr. Jacobson. We appreciate your adherence to the time frame, and we had, I think, alerted all of the witnesses to the 5-minute rule.

Our next witness, Mr. Eddie Fritts from the NAB, has been very active in sensitizing broadcasters to this issue, as we have seen, and I think he has been the lead person in the role that the industry has played in the antidrunk driving campaign.

Mr. Fritts.

STATEMENT OF EDWARD O. FRITTS

Mr. FRITTS. Thank you, Mr. Chairman.

We have a voluminous statement that we would like to submit for the record.

Mr. WIRTH. Without objection and with gratitude, that will be inserted in the record.

Mr. FRITTS. And I have a very brief statement which I will present now.

We welcome this opportunity to discuss the issue of broadcast beer and wine advertising. The overwhelming evidence clearly shows there is no linkage between advertising and alcohol misuse. After reviewing nearly 70 separate studies, the Federal Trade Commission reached the same conclusion and refused to ban or restrict beer and wine ads.

Responsible ads do not encourage misuse, and without a causal link to misuse, neither a ban nor mandatory counter advertising, in our view, is justified. Broadcasters strongly oppose any ban, restriction, or counter advertising measure imposed on beer and wine advertising.

Settled FCC policy holds that the fairness doctrine does not apply to product ads. The courts have affirmed this. The memo attached to our written statement from Prof. Glen Robinson, who was Commissioner at the FCC when it reached this decision, explains the fallacies of the Commission's cigarette decision in detail.

Once the FCC decided that cigarette ads raised a controversial issue because of the Surgeon General's report, it was confronted with numerous demands for counter ads, including the following actual cases: armed service recruitment ads raised an issue about the Vietnam war; high powered car and gas ads encouraged pollution of the environment; trash compactor ads discouraged waste recycling efforts; detergent ads encouraged water pollution; and dog food ads led to too many dogs, which foul the streets of New York City.

Once commercials were deemed to raise issues, groups saw issues in programs as well. Shows that depict women in the home were sexist, according to feminists. The Daniel Boone series raised questions about the treatment of Indians, and crime dramas raised the question of gun control. The list could literally go on forever.

Finally in 1974, the FCC called an end to this nonsense. It rejected the earlier application of the fairness doctrine to ordinary product ads, including the old cigarette ads, and this action was upheld by the courts.

The fairness doctrine was the sole creation of the FCC. This complex doctrine has always been interpreted and enforced by the

FCC. Action to legislatively mandate counter ads would for the first time inject Congress directly into the structure of the fairness doctrine, a very grave precedent considering all of the issues and groups waiting in the wings.

NAB has a long-term nationwide commitment to help increase public awareness of the alcohol misuse problem. We have organized local broadcaster task forces in all 50 States, and they are working with local chapters of the Mothers Against Drunk Driving, Students Against Driving Drunk, the National Federation of Parents for a Drug-Free Youth, the PTA, and others to develop programs for local involvement on a long-term basis.

NAB's Operation Prom/Graduation project is now well underway and effective. Working through associations representing car dealers, florists, soft drink distributors, restaurants, and local MADD chapters, NAB is equipping communities with materials necessary that they need to organize their own graduation programs, and they are doing that.

Consciousness is being raised. Just yesterday, the chief judge in the juvenile court system of Fairfax County, VA, cited a drastic drop of nearly 50 percent in teenage drug and alcohol abuse offenses in calendar 1984. The judge stated that the drop is consistent with data elsewhere around the country.

Tonight, ABC will air their "One Too Many" program, which was scheduled many months ago. Tomorrow NAB will provide a nationwide satellite feed to all radio and TV stations featuring the Stevie Wonder program, "Don't Drive Drunk," and we will participate in the Kennedy Center press conference with Stevie Wonder and the Department of Transportation.

With the involvement of all groups in society, we can reduce the misery caused by alcohol misuse. The Congress can count on broadcasters to continue our efforts to increase society's awareness of these serious problems.

Mr. Chairman, I would like to show a few samples of public service announcements which are being broadcast around the country.

Mr. WIRTH. We have about a minute, Mr. Fritts.

[Video presentation.]

Mr. FRITTS. Those are samples of locally produced public service announcements, that one by the Texas Association of Broadcasters and the preceding one by the Wisconsin Broadcasters Association.

Thank you, Mr. Chairman.

[Testimony resumes on p. 274.]

[The prepared statement of Edward Fritts and attachments follow:]

STATEMENT OF EDWARD O. FRITTS

PRESIDENT

NATIONAL ASSOCIATION OF BROADCASTERS

INTRODUCTION

My name is Edward O. Fritts. I am President of the National Association of Broadcasters ("NAB"), a trade association representing over 4,500 radio stations and 850 television stations, including all the major commercial networks and groups. I appreciate this opportunity to testify before this Subcommittee on the issue of broadcast advertising of beer and wine.

NAB shares this Subcommittee's and indeed all of society's concern for the enormous cost of alcohol abuse. Yet, in the urge to do "something" to address this concern, some have advocated policies that would contribute nothing to reducing alcohol-related problems while seriously harming broadcast service to the public. I welcome the chance to dispel some of the many myths and emotion laden allegations which attempt to link broadcasting to the problems of alcohol misuse. I would also like to discuss some of the ways in which the broadcast community has contributed to the fight against drug and alcohol abuse. Through voluntary public awareness and careful attention to advertising and programming policies, broadcasters have demonstrated great sensitivity to this important societal concern.

I IN THE ABSENCE OF A DEMONSTRATED CAUSAL LINK BETWEEN BEER AND WINE ADVERTISING AND ALCOHOL ABUSE, NEITHER A BAN NOR MANDATORY COUNTER-ADVERTISING LEGISLATION IS WARRANTED.

The focus of the current debate in Congress over broadcast beer and wine advertising has been the charge that such advertising somehow contributes to problem drinking. The primary policy advanced has been an outright ban of broadcast advertising. Mandatory counter-advertising has been offered as a "second best" or compromise policy alternative. Both assume a causal link between advertising and abuse, and neither policy alternative is justified in the absence of such a demonstrated link.

The overwhelming weight of evidence from years of research conducted on this question solidly supports the conclusion that advertising has no siginificant effect on alcohol misuse.[1]

Mandating beer and wine counter-advertisements in the absence of a causal link to alcohol abuse arbitrarily singles out beer and wine advertisements as the trigger for alcohol health messages. Without a causal link, a mandatory counter-advertising law amounts to government dictating programming content to broadcast what it considers to be in the public interest. Such action is fundamentally counter to the private broadcasting system that has operated with minimal governmental intrusion for more than five decades.

Finally, every counter-advertisement Congress might require may reduce the opportunity for airing the many other equally worthy public service messages which do not happen to relate to a product whose misuse may produce adverse health effects. The economic nature of advertiser-supported broadcast programming imposes limits upon the number of public service announcements a broadcaster can carry free of charge. The practical result of a counter-advertising requirement for certain product-related causes would be that exposure for causes such as the Red Cross, multiple sclerosis, or Ethiopian famine relief would be accorded secondary status to those product-related causes such as beer and wine advertising. Clearly this result would not be in the public interest. The choice of how much airtime to devote to what public service announcement should reside with the broadcaster, who knows the needs and interests of the local community.

This decentralized and flexible system of responsibility, in which daily programming decisions are placed in the hands of broadcasters, respects First Amendment freedoms and protects the benefits which flow from those freedoms. In the past neither Congress nor the FCC has sought to dictate the selection of PSA's, the

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1. See Recommendations of the Staff of the Federal Trade Commission in Docket 209-46, the "Omnibus Petition For Regulation of Unfair And Deceptive Alcoholic Beverage Advertising and Marketing Practices," ("CSPI Petition"), p. 13. See also comments of Dr. Donald Strickland, Associate Director, Social Science Institute, Washington University, St. Louis, Mo., submitted to Subcommittee on Alcoholism and Drug Abuse, United States Senate, February 7, 1985, p.2.

choice of which has been the sole prerogative of the broadcaster. As the programming editor, the broadcaster makes these selections based on the needs of the community. The result of this system is that the United States enjoys the finest broadcast service in the world.

Mandatory counter-advertising legislation would stand this sensible and successful regulatory structure on its head. Such a law would put the FCC and Congress in the role of second-guessing the decisions of thousands of broadcasters all across the nation as to which public service announcement aired at which time period actually best serves the day-to-day needs and interests of their communities. Broadcasters must have the flexibility to respond to public issues in terms of their importance in the community being served. The Federal Government should not attempt to be the arbiter of public issues for the more than three thousand communities with licensed broadcast facilities.

II SETTLED COMMISSION POLICY HOLDS THAT THE FAIRNESS DOCTRINE DOES NOT APPLY TO STANDARD COMMERCIAL ADVERTISEMENTS.

The purpose of the Fairness Doctrine is to "ensure that the public will be informed of the important issues which confront it and of the competing viewpoints on those issues..."[2] Sound reasoning following years of frustrating regulatory experience convinced the FCC that application of the Fairness Doctrine to commercial advertisements was fundamentally flawed and contrary to the purposes of the doctrine. Appendix A to this statement is a memorandum prepared for NAB by Glen O. Robinson, Professor of Law, University of Virginia. Professor Robinson was a member of the FCC in 1974 when the Commission rejected its earlier application of the Fairness Doctrine to commercial advertisements. His memorandum clearly establishes that there is no principled basis for invoking the Fairness Doctrine against specially selected products.

Without question, advertisements for beer and wine present the products in an appealing fashion. The ads can be upbeat and humorous, the actors attractive. Yet, they do not depict overconsumption, or extoll dangerous practices; and they are not targeted at the underage.

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[2] Fairness Doctrine and Public Interest Standards, 48 F.C.C.2d 3 (1974), aff'd sub. nom., NCCB v. FCC, 567 F.2d 1095 (D.C. Circuit, 1977), cert. denied, 436 U.S. 926 (1978) ("Fairness Report").

Most importantly, these commercials are presentations of the brand name in appealing and appropriate settings and no more than that. Brewers and vintners use advertising for brand marketing to increase their market share at the expense of one another. A one percent shift toward a particular brand of beer at the retail level represents $380,000,000.

However, such commercials simply do not amount to substantive discussion of issues which might underlie those product claims. Nor does the fact that commercials stress remain silent about potential problems associated with *misuse* of beer and wine constitute the "raising" of one side of a controversial issue requiring balanced coverage. Beer and wine are only two of numerous advertised products whose *misuse* can lead to problems.

Determinations of the existence of issues of controversy in broadcast programming have always been left to the FCC, the expert regulatory agency. For the reasons set forth below, the FCC has rejected the approach of treating simple product claims as serious discussions of issues associated with the product.

A. Standard product claims do not rise to the level of issues of public importance.

From the moment the FCC issued its ruling applying the Fairness Doctrine to cigarette advertisements, it became involved in a long and futile effort to reconcile the basic purposes of the Fairness Doctrine with the assertion that product claims contained in commercial advertisements may suggest, in and of themselves, controversial issues of public importance. In issuing its 1974 *Fairness Report*, a three-year reassessment and clarification of basic Fairness Doctrine policy, the Commission concluded that application of the Fairness Doctrine to standard product advertisements was a "mechanical" approach that "represented a serious departure from the doctrine's central purpose, which of course, is to facilitate the development of an *informed* public opinion."[3] In the absence of some *meaningful* discussion, such as an editorial advertisement, standard product advertisements would not trigger the Fairness Doctrine.

The Commission's description of its prior "mechanical" approach referred to its insistence, in the cigarette case[4] upon defining the issue in terms of the "desirability of smoking", which automatically assumed that all cigarette commercials presented one side of a controversial issue—regardless of what the commercials actually stated, or didn't state.

In reversing its position, the Commission stated that " w e believe that standard product commercials, such as the old cigarette ads, make no meaningful contribution toward informing the public on any side of any issue"[5] and noted that "it seems to us to make little practical sense to view advertisements such as these as presenting a meaningful discussion of a controversial issue of public importance."[6]

The Commission concluded that ordinary product advertisements do not rise to the level of public issues. In its view:

> application of the fairness doctrine to normal product commercials would, at best, provide the public with only one side of a public controversy. In the cigarette case, for example, the ads run by the industry did not provide the listening public with any information or arguments relevant to the underlying issue of smoking and health. At the time of our ruling, Commissioner Loevinger suggested that we were not really encouraging a balanced debate but, rather, were simply imposing our view that discouraging smoking was in the public interest. 9 F.C.C. 2d. at 953. While such an approach may have represented good policy from the standpoint of the public health, the precedent is not at all in keeping with the basic purposes of the fairness doctrine.[7]

In rescinding its application of the Fairness Doctrine to cigarette advertisements, the Commission did not intend or believe that the public would remain uninformed about

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3. Ibid., p.24.
4. Television Station WCBS-TV, 8 F.C.C.2d 381 (1967); stay and reconsideration denied, 9 F.C.C.2d 921 (1967) ("Banzhaf").
5. Ibid.
6. Ibid.
7. Ibid., p.25.

important consumer issues. The Commission stated that:

> the decision to cover these and other matters of similar public concern appropriately lies with individual licensees in the fulfillment of their public interest responsibilities, and should not grow out of a tortured or distorted application of fairness doctrine principles to announcements in which public issues are not discussed.[8]

The Commission's 1974 Fairness Report constitutes current FCC opinion and its reasoning is still sound. Beer advertisement claims can hardly be said to inform viewers of one side of any issue, important or otherwise. Thus, mandatory alcohol counter-advertisements would not balance any important public issue, contrary to the goals of the Fairness Doctrine, and would gravely burden broadcasters' First Amendment freedoms. In the absence of some substantive discussion of an issue of social importance, standard beer and wine advertisements do not and should not trigger the Fairness Doctrine.

B. The precedent set by counter-advertisements opens a Pandora's Box of similar demands.

Mandatory counter-advertising for alcoholic beverage advertising would set a precedent generating pressures for equal time for a host of similar products. It must be remembered that alcoholic beverages are not inherently dangerous. The cost to society results from excessive or irresponsible consumption.

Thus, the precedent set by mandatory alcohol beverage counter-advertising could be applied to any number of products which, like beer and wine, are not inherently dangerous but whose misuse could have adverse health effects. Such products include automobile safety, over-the-counter medical remedies, soft drinks and sugared foods, fast foods and dairy products. Numerous advocate groups would come forward to demand similar counter-advertising legislation. Congress would then be faced with demands for dictating increasing portions of the broadcast day.

The FCC's 1967 decision to apply the Fairness Doctrine to broadcast cigarette commercials produced exactly that result. In its Banzhaf ruling, the Commission held that "cigarette advertising presents a unique situation"[9], inherently dangerous when used in any amount. For that reason the Commission limited its ruling to cigarette commercials. Moreover, the Federal Appeals Court for the D.C. Circuit, in affirming the FCC's ruling, agreed that cigarettes were, in fact, "unique".[10]

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[8] ibid., p.27.

However, the same Appeals Court ruled in 1971 that the cigarette precedent could not logically be limited to cigarette advertising.[11] The Court held that advertisements that extolled the virtues of high powered automobiles and high octane gasoline glorified product attributes aggravating an existing health hazard, air pollution, and triggered the Fairness Doctrine. Professor Robinson notes that "the 'principle' of *Banzhaf* lies not in the nature of the product but in the notion that product messages implicitly 'raise' whatever controversial issues that may surround their use."[12]

Even before the courts compelled the Commission to examine advertisements other than for cigarettes under its new ruling, other groups came forth with similar demands. The first commercials targeted for Fairness Doctrine application were spot advertisements urging enlistment in the armed services, on the grounds that such commercials implicitly raised one side of the issue of the desirability of joining the military during the Vietnam War[13].

One group known as "Citizens Arise Now" (CAN) lodged a complaint aginst trash compactor commercials that were alleged to imply a negative viewpoint on the issue of trash recycling.[14] Another group concerned about phosphate-containing detergent advertisements and their potential effects on the environment, complained about detergent advertisements.[15] The Sierra Club, concerned about the possible environmental consequences of snowmobiles, complained about advertisements for snowmobiles.[16] Finally, it even seemed that dogs might no longer be man's best friend as one citizen in New York City (representing the group "Children Before Dogs") petitioned for counter-advertisements balancing dog food commercials which encouraged pet ownership without addressing the concerns that pets led to disease and excessive sewage on New York City sidewalks.[17] As the Commission noted in its Fairness Report, "it is hard to imagine a product commercial so pure that it would not be viewed as implicitly raising some controversial issue or resting upon some disputed scientific premise or remaining silent about negative aspects of the product."[18] Of course, many of the Fairness Doctrine complaints were denied, but only after consideration by the Commission. Irrespective of the underlying controversy surrounding these issues, the problem is that such an open-ended doctrine would generate enormous uncertainty in broadcasters, who have to determine what their Fairness Doctrine obligations are and then meet them.

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[9] *Television Station WCBS TV*, 9 F.C.C.2d 943.

[10] *Banzhaf v. FCC*, 405 F.2d 1082, 1097n. 63 (D.C. Cir., 1968).

[11] *Friends of the Earth v. FCC*, 449 F.2d 1164 (D.C. Circuit, 1971).

[12] Appendix A, p. 4.

[13] The FCC's decision to deny the request was upheld. *Green v. F.C.C.*, 447 F2d 323 (D.C. Cir., 1971).

[14] *John S. McGinnis* (Citizens Arise Now), F.C.C. 8330-N (1971).

[15] FCC ruling on WCBS-TV, WABC-TV and WNBC-TV, June 28, 1971.

Once the Fairness Doctrine was applied to commercial product advertising, it was only a matter of logic to extend it to entertainment programs. The National Organization for Women (NOW) complained about programs and commercials that allegedly depicted women as dependent homebodies incapable of assuming serious responsibilities.[19] Other groups complained that the "Daniel Boone" series raised the issue of the manner in which American Indians were treated.[20] Police dramas were alleged to raise the issue of gun control.[21]

Because the Fairness Doctrine could not be contained in its application only to cigarettes, the Commission in its 1974 Fairness Report admitted the error of its cigarette ruling and discontinued application of the Fairness Doctrine to standard product claims. Henceforth, the Commission would apply the doctrine only to those

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16. Peter C. Herbst, F.C.C. 8330-O, March 16, 1971.
17. Fran Lee, F.C.C. 8427-C, September 27, 1972.
18. Fairness Report, citing Putz, Fairness and Commercial Advertising: A Review and a Proposal, 6 U.S.F.S. Rev. 215, 246 (1972).
19. National Organization for Women v. FCC, 555 F.2d 1002 (D.C. Cir., 1977).
20. David Hare, 35 F.C.C.2d 868 (1972).
21. Thomas E. Mitchell, 54 F.C.C.2d 593 (1975).

commercials which made a meaningful discussion of a public issue. As Professor Robinson concluded of the Fairness Doctrine:

> Its enforcement by the FCC, its acceptance by the courts, and ultimately its acceptance by Congress and the public, have rested on the notion that enforced fairness was a tool to correct clear licensee error or abuse in treating controversial public issues, not an all-purpose mechanism by which to shape radio and television programs according to administratively determined social ends.[22]

Any attempt to redirect the Fairness Doctrine toward standard product claims such as beer and wine advertisements can only return the Commission to the same logical quicksand from which it extricated itself in the 1974 Fairness Report.

III RESPONSIBLE ADVERTISEMENTS FOR BEER AND WINE PRODUCTS DO NOT ENCOURAGE ALCOHOL ABUSE.

Broadcasters' contributions to the fight against alcohol abuse are a response to their obligations under the public interest standard of the Communications Act of 1934 to address serious concerns of their local communities. Credible scientific evidence fails to find a causal link between advertising and alcohol abuse. Therefore, it does not follow that broadcasters who air responsible commercial advertisements for beer and wine must bear the blame for alcohol abuse. Nor does the airing of alcohol advertising generate an obligation in broadcasters to air counter-advertisements.

Broadcasters staunchly defend their First Amendment freedoms. PSA's and other alcohol-related public service programming are aired at the discretion and under the editorial control of the local broadcaster. It is in response to a generalized public service obligation which respects, to the maximum extent possible, broadcasters' journalistic freedoms. Counter-advertisements, dictated as to manner and placement by the government, gravely burden those freedoms. A free society should tolerate no restrictions upon the responsible advertisement of lawful products. Beer and wine are lawful products and broadcasters should be free to air responsible commercials for them.

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22. Appendix A, p.14.

A. The preponderance of credible scientific research demonstrates the lack of a causal link between alcohol advertising and abuse.

Responsible broadcast advertising does not encourage people to misuse alcohol. Alcohol consumption and abuse behaviors can be related to a complex set of sociological, psychological, physiological and genetic factors. The research indicates that, compared to influences such as physiological imbalances, family experiences, or peer influences, mass media exposure is generally considered to be among the weakest or non-existent influences on alcohol consumption, to say nothing of abuse, which is society's true concern.

The Federal Trade Commission, in recently denying the CSPI petition to ban or otherwise restrict alcohol advertising, found, after an exhaustive review of the literature, "no reliable basis on which to conclude that alcohol advertising significantly affects alcohol abuse".[23] Thus, the credible scientific research supports the view that otherwise responsible broadcast alcohol advertisements, in and of themselves, do not significantly affect alcohol abuse.

B. Broadcasters ensure that alcoholic beverage advertising is appropriate and non-deceptive.

Broadcasters, who are responsible for the advertising that is aired over their stations, exercise that responsibility to ensure that programming is appropriate and non-deceptive. For example, the major networks maintain extensive commercial standards departments that carefully screen each advertisement for appropriateness before airing. Advertisements that in any expressed or implied way encourage misuse of alcoholic beverages are rejected. Few, if any, beer or wine ads are produced for national or regional use unless they meet the individual network's standards. Moreover, the station groups or individual stations maintain their own scrutiny of beer and wine ads, particularly those produced for local use which do not come under the review of the

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23. Michael Jacobson, 209-46, p.2 (April 15, 1985).

network standards divisions.

In rare instances questionable advertisements may have been broadcast. In fact, the opponents of beer and wine advertising consistently point to a very small number of ads in their criticism of all beer and wine advertising. It is to the credit of these standards departments that when valid complaints about advertisements are received, action is taken. Through the individual actions of responsible broadcast licensees, the overwhelming majority of beer and wine advertisements are appropriate and in good taste.

Despite the lack of credible evidence linking alcoholic beverage advertising and alcohol abuse within any age group, critics continue to claim that millions of teens are bombarded by these commercials during late night and sports programming. According to A.C. Nielsen data, however, fewer teens watch sports and late night programming than any other program category or daypart. Table I (see Appendix B) compares the teen audiences for six television programming types. The data are drawn purposefully from November, 1984, to include the professional and college football seasons. Sports ratings should be highest during this period. A.C. Neilsen data document that weekend sports receive the lowest ratings among teens. In fact, of all types of television, weekend sports programming has the lowest percentage of teens (aged 12-17) in its audience.

Critics also assert that television programming depicts excessive or glamorous drinking. In so doing, they again can point to only a very small number of programs. Although no connection has been established between the viewing of drinking scenes and alcohol consumption or misuse, the Hollywood creative community has become increasingly sensitive to gratuitous use of alcohol in today's television fare. Two years ago, the Caucus of Producers, Writers and Directors examined the manner in which alcohol was being used in programs. In their white paper entitled, "We've Done Some Thinking," the Caucus urged that drinking scenes which are not necessary to the development of the plot or the characters be cut from scripts.

The results have been impressive. Gratuitous drinking has been sharply reduced in such programs as Dallas, Magnum, P.I., and Hunter. Other programs such as Hill Street Blues, Cheers and Facts of Life deal seriously with alcohol-related problems and use recovering alcoholics in lead roles. The Caucus has stated that it will continue to urge the creative community to remain sensitive to drinking behavior in television programming.

Thus, with respect to their advertising and programming policies, broadcasters have been willing to hear complaints and to work with groups concerned about alcohol misuse to improve the quality of material broadcast to the public. Continued reliance on these efforts, not a ban on beer or wine advertising or mandatory counter-advertising, will best serve the public interest.

C. Experience with advertising bans has demonstrated their ineffectiveness.

Restrictions on beer and wine advertisements will have no effect on the problems caused by alcohol misuse. Restrictions are the first manifestation of a prohibitionist approach. History documents that the era of Prohibition was a failure that encouraged millions of lawabiding citizens to flaunt the law and spawned organized crime.

Several West European countries, as well as the entire Soviet Bloc, either restrict or ban entirely the advertisement of alcohol beverages, yet they suffer abuse rates far in excess of the United States. Clearly, the absence of alcohol advertising has not lessened their alcohol-related problems.

The results of the ban on broadcast cigarette advertising also demonstrated the futility of advertising bans. Since the ban on broadcast cigarette advertising, cigarette consumption continues to rise.

Of course, a distinction must be made between cigarettes and beer and wine because The Surgeon General's Report of 1964 expressed the consensus of years of medical research demonstrating that cigarettes inherently posed a significant health risk to the consumer. The same cannot be said for consumption of beer and wine. There is no link between moderate consumption of beer and wine and any adverse health effects. Beer and wine are not inherently dangerous products.

Today, the percentage of heavy smokers is greater than ever. Significantly, teens who have never been exposed to broadcast cigarette advertisements continue to smoke at higher levels than would be expected for this age group if broadcast cigarette advertisements actually led to increased smoking. Moreover, the ban on cigarette advertising led to a dramatic shift of advertising dollars into print, outdoor and magazine advertising. Prior to the ban, newspaper advertising expenditures were approximately $14 million. By 1980, the figure totaled $300 million (a 50% increase when adjusted for inflation). Prior to the ban, outdoor advertising received approximately $ 7 million in cigarette advertising revenues. By 1980 that figure had increased to $193,000,000. Over the same period, magazine advertising expenditures rose from $50 million to more than $266 million.[24]

IV BROADCASTERS ARE SERVING THE PUBLIC INTEREST WITH RESPECT TO CONCERNS ABOUT MISUSE OF ALCOHOL.

For many years broadcasters have led efforts to inform the public about the dangers of irresponsible use of alcohol. The history of industry involvement includes NAB's Radio and Television Codes which contained strict standards governing the advertisement of beer and wine products. Since the dissolution of the Codes by the Department of Justice, the networks, groups and individual broadcast licensees have enforced standards of their own and scrutinized all beer and wine commercials.

Broadcasters also have used their programming policies to promote awareness of the dangers of alcohol misuse. The growing national intolerance for alcohol misuse, specifically drunk driving, has been amplified and publicized by broadcasters around the nation in a variety of news stories, editorials, full-length public affairs programs and public service announcements.[25] For instance, tonight ABC is broadcasting in prime time "One Too Many", a compelling drama on high school alcohol and driving.

We are now in the height of the prom/graduation period, a time of well-deserved celebration for our youngsters. Through NAB every station has been satellite fed programming suggestions, public service announcements and a wealth of material to galvanize our communities to celebrate graduation but to do so in a drug free and sober fashion. Joining with NAB in this endeavor are the trade associations for the florists, car dealers, restaurants and soft drink manufacturers. The synergy of this joint effort is most impressive. The videotape NAB prepared to launch the campaign included endorsements from the founders of MADD and the National Federation of Parents for Drug Free Youth. We are working with their chapters on this project.

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[24] Federal Trade Commission. Report to Congress Pursuant to the Federal Cigarette Labeling and Advertising Act for the Year 1980.

[25] See Appendix C for examples of typical broadcast editorials; feature news stories; public affairs programs; public service announcements(PSA's); and community outreach programs.

Broadcasters' efforts have been saluted by Transportation Secretary Elizabeth Dole, by the Presidential Commission on Drunk Driving. In fact, NAB has been invited to serve on the National Boards of MADD and the National Commission on Drunk Driving. These tributes illustrate the breadth of our industry's involvement in programming and non-programming activities to combat alcohol and drug abuse.

In response to broadcasters' desires for information to plan alcohol-related programming and public service activities , NAB, at its January, 1984, Board Meeting, prior to the formation of Project SMART, announced the formation of the Alcohol and Drug Abuse Task Force to encourage and coordinate the broadcasting industry's activities in combating alcohol and drug abuse. Soon thereafter, nearly every state broadcast association established a task force to foster state level broadcast activity.

NAB has established a clearinghouse for the collection and dissemination of alcohol-related programming ideas and activities. The Association has begun a regular monthly satellite feed of ideas and information from this clearinghouse to our industry. The industry's input into our clearinghouse has been extensive— to date, over 1,000 contributions and requests for information have been received. On December 3, 1984, NAB distributed by satellite 32 anti-drunk driving and drug abuse PSA's to all member and nonmember television stations for use during National Drunk and Drugged Driving Awareness Week (December 9-16) and throughout the holiday season.

State associations have produced and circulated PSA's in conjunction with local chapters of MADD, SADD, PTA, and National Federation of Parents for Drug Free Youth, as well as business and other community groups. The associations have also organized awareness campaigns with allied industries such as restaurant and automobile dealers associations. In Washington, the Washington Regional Alcohol Program ("WRAP", composed of representatives from the Capital Centre, local broadcasters, automobile dealers, insurance companies and local tavern and restaurant owners) produced the designated driver and dial-a-ride programs we witnessed during the recent holiday season. WRAP plans additional publicity campaigns throughout the year.

Federal, state and local officials have acknowledged broadcasters' efforts. Some examples follow:

0 During the 1983 holiday season there was not a single alcohol-related highway fatality in Washington, D.C. Area officials cited media exposure as a possible factor.

0 Last July, the Iowa Department of Transportation reported that alcohol-related traffic fatalities had declined by more than one half for the first half of 1984, due in large part to the media exposure given to law enforcement efforts in that state.

0 Authorities in Johnstown, Pennsylvania, which experienced not a single drunk driving fatality during the holiday season, saluted the media exposure given to the problem of drunk driving.

0 The State of Washington Traffic Safety Commission announced on January 8, 1985, that during the period between December 24, 1984 and January 2, 1985, there was not one alcohol-related traffic fatality in that state. The Commission said that the media's contribution "defied measurement."

V THE BROADCAST COMMITMENT IS GROWING.

The future commitment from broadcasters to the fight against alcohol misuse will be even greater. At its January, 1985, Board Meeting, NAB announced the commencement of an industry-wide campaign urging broadcasters to pledge airtime to educate the public about these problems. The Association has distributed pledge cards to all broadcasters for signed commitments to airtime including public service announcements, editorials, public affairs and other forms of programming devoted to the problems of alcohol misuse.

Thus, it is abundantly clear that broadcasters nationwide, independently and collectively through the NAB and state associations, are responding with leadership and sensitivity to the problem of alcohol misuse.

V RESTRICTIONS ON BEER AND WINE ADVERTISING WOULD SEVERELY HARM BROADCAST SERVICE TO THE PUBLIC.

To restrict the broadcast advertising of beer and wine in the absence of evidence of a causal link to alcohol abuse would be an emotional response impairing service to broadcast listeners and viewers. The loss of revenues from beer and wine advertising would have a profound effect on broadcast stations, especially radio stations. The average radio station in 1983 generated a pre-tax profit of 7.29% on revenues of $587,100. Beer and wine advertising represents approximately 12% of radio's national spot and network dollars. There are over 8,200 commercial radio stations in the nation serving local communities. Many are having financial problems at present. Clearly, the loss of this revenue would have dire consequences for literally hundreds of stations.

Most of these dollars support sports programming. Local and regional play-by-play accounts for team sports—basketball, football and baseball coverage would diminish, perhaps move to pay-per-view or disappear altogether. For instance, in the Washington, D.C. market, WJLA television carries the Atlantic Coast Conference game of the week often on week nights in prime time. These broadcasts are avidly followed by an audience whose demographic profile is one of predominantly middle age males, many of whom are alumni or lifetime followers of these conference universities. Without beer advertising to support the regional consortium of stations that carry these games, this expensive type of programming, requiring live, on-location personnel and equipment, could very well prove unprofitable and would force the station to discontinue these local and regional broadcasts. The station would revert to carrying the national network entertainment programming.

New advertisers are not waiting in the wings, certainly not at the revenue levels necessary to support this expensive programming. We learned this during the past football season, with the proliferation of games and smaller audiences.

Ethnic radio stations, whose owners are most often recent minority entrants to the broadcasting industry, would be the most harmed by beer and wine advertising restrictions. These products account for about eighteen per cent of ad revenues. Moreover, minority-formatted stations, which in many cities appeal to a relatively narrow audience and advertiser base, will feel the loss of any single advertising source, such as beer and wine, more acutely than more broadly formatted stations. Minority college sports programs, NAIA and NCAA Division II and III teams especially, with a small and specialized audience, depend heavily upon a relatively small number of sponsors, chiefly beer. Restrictions upon beer advertising could jeopardize these sports programs.

The communications marketplace is experiencing exponential growth with hundreds of new stations, cable television, low-power TV and other new competition, while the number of advertisers remains relatively constant. Without beer and wine advertising revenues, competition can only be diminished and local service, especially the very popular sports programming, will suffer. The public should not be so disserved in the absence of any factual evidence for banning or restricting beer and wine advertising.

CONCLUSION

Broadcasters are licensed to serve the public interest and have done so with respect to a serious national problem, misuse of alcohol. Responding to growing concern in their communities, broadcasters have provided a variety of editorial, news, and public affairs programs as well as non-programming activities to increase public awareness of this serious concern.

However, society's concern is with irresponsible or excessive consumption of alcoholic beverages. Moderately consumed, beer and wine are not inherently harmful and their consumption is considered appropriate by many in our society. Broadcast advertisements depict these products in a social environment and in a positive light, but do not encourage overconsumption or extoll misuse. Moreover, considerable scientific research clearly demonstrates that there is no causal connection between responsible advertisements for beer and wine and alcohol abuse. In the absence of such a causal link, neither a ban nor mandatory counter-advertising is justified.

To ignore the scientific evidence and ban beer and wine advertising would severely harm broadcast service to the public without any benefit to the public. To mandate counter-advertising in the absence of a causal link arbitrarily singles out beer and wine ads as the trigger for public health messages and amounts to government dictating broadcast programming content which it considers to be in the public interest. Such a law would put Congress and the FCC into the role of second-guessing the daily decisions of thousands of broadcasters all across the nation as to which public service announcements best serve the needs of the local community.

Mandatory counter-advertising is fundamentally contrary to the private broadcasting system that has provided superior broadcast service with minimal governmental intrusion for over five decades. Most importantly, a mandatory counter-advertising requirement for beer and wine ads would set a precedent for numerous other groups with complaints about other products which are not inherently dangerous but can present health risks when misused.

The FCC's experiment with application of the Fairness Doctrine to cigarette ads ended years later in frustration as the Commission learned that it could not limit the doctrine to cigarettes and demands mounted for extending the doctrine to other commercials and programs. Returning the Commission to that logical quicksand by mandating Fairness Doctrine treatment for beer and wine ads, products that, unlike cigarettes, are not harmful when consumed in moderation, would open the floodgates to even more demands for counter-advertisements for similar products.

As the FCC noted in its Fairness Report, broadcasters can be expected to devote attention to the issue of alcohol-related problems in fulfillment of their public interest responsibilities. They have done so in a multitude of ways and the Congress can look to the industry to continue to fulfill its public service responsibilities. The Fairness Doctrine should not be distorted to manufacture a link between that public service and the carriage of beer and wine ads in order to ensure that public service. Such an artificial and awkward measure provides no public interest benefits and only hinders broadcasters in their efforts to serve their communities.

APPENDIX A

THE FAIRNESS DOCTRINE
AND PRODUCT ADVERTISING

Glen O. Robinson
John C. Stennis Professor of Law
University of Virginia

Memorandum Prepared for the

National Association of Broadcasters

May 15, 1985

This memorandum evaluates legal and policy aspects of proposals to extend the FCC's fairness doctrine to commercial product advertising on radio and television. It is occasioned by proposals directed especially at advertising of alcoholic beverages; however, there is no principled basis for applying the fairness doctrine to specially selected commercial messages. After reviewing the past history of this issue and the implications of applying the fairness doctrine to product advertising, I conclude the public interest does not warrant such an application. Indeed, carried to its logical end such an application would present serious First Amendment problems.

I. *History*

Recent proposals to apply the fairness doctrine to routine advertising of alcoholic beverages on radio and television recycle an old controversy. It has been nearly a score of years since the FCC's cigarette advertising decision, holding the fairness doctrine applied to cigarette advertising. *WCBS-TV*, 9 F.C.C. 2d 921 (1967), *aff'd*, *sub nom.*, *Banzhaf v. FCC*, 405 F.2d 1082 (1968), *cert. denied*, 396 U.S. 872 (1969). While the Commission there emphasized its decision did not augur extension of the fairness doctrine to commercial product advertising generally, it soon became apparent that the principle could not be confined to selected controversies or product categories.

Shortly after the court in *Banzhaf* affirmed the FCC's cigarette ruling the Commission was asked to rule that broadcast spot advertisements urging enlistment in the armed services were subject to the fairness obligation. The FCC denied the requests on alternative grounds: one, that the issue presented (whether the U.S. should maintain an armed force) was not a matter of important public controversy; two, if an important public controversy was implicated (the draft, Vietnam), it had been adequately treated on both sides. The FCC's denial of the request was affirmed. *See Green v. FCC*, 447 F.2d 323 (D.C. Cir. 1971); *Neckritz v. FCC*, 446 F.2d 501 (9th Cir. 1971). However, within a few weeks of the decision affirming the Commission's rulings on enlistment ads the court in *Friends of the Earth v. FCC*, 479 F.2d 1164 (D.C. Cir. 1971), held that routine spot advertisements for automobiles and gasoline were within the scope of the fairness doctrine inasmuch as they implied a message about the health hazards of automobile pollution -- an issue of important public controversy.[1] Reversing the Commission's holding to the contrary, the court found no legally relevant distinction between cigarette ads on the one hand and automobile or gasoline ads on the other. If the former implied a message about health hazards of smoking, the latter equally implied a message about the health hazards of pollution.

Friends of the Earth made clear that if the fairness doctrine were to be applied to product advertising at all, it could not be limited to "special" cases. It also suggested that the potential reach of application was breathtakingly broad. Virtually any product or service that had a significant link to an issue of important public controversy could trigger a fairness obligation insofar as promotion of the product was deemed to imply a message about the use of the product and hence about any controversy that surrounded such use.

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[1] *Friends of the Earth* was anticipated in *Retail Store Employees Union, Local 880, RCIA v. FCC*, 436 F.2d 248 (D.C. Cir. 1970) when the court again reversed the FCC's refusal to consider a fairness complaint directed against a station's broadcast of a product commercial by a store that was under union boycott. The court, relying on *Banzhaf*, found the ads impliedly raised an issue pertinent to the controversy between the store and union even though the ads made no mention of the controversy.

Concerned that such an expansive application of the fairness doctrine could drag it into feckless controversies that would not serve the purposes for which the fairness doctrine was intended, the FCC in 1974 repudiated its cigarette ruling and adopted a policy of applying the fairness doctrine only to those commercials which "are devoted in an obvious and meaningful way to the discussion of public issues."[2] *Fairness Report*, 48 F.C.C 2d 1, 26 (1974); *Fairness Report Reconsideration*, 58 F.C.C 2d 691 (1976). The Commission's decision was affirmed in separate decisions by the First Circuit and the D.C. Circuit. *See Public Interest Research Group v. FCC*, 522 F.2d 1060 (1st Cir. 1975), *cert. denied*, 424 U.S. 965 (1976). *National Citizens Comm. for Broadcasting v. FCC*, 567 F.2d 1095, 1102-1110, (D.C. Cir. 1977), *cert. denied*, 436 U.S. 926 (1978).

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[2] The Commission distinguished routine commercial product messages from "editorial advertisements," that directly and substantially" comment on public issues or that "obviously and substantially" relate to such issues. Application of the fairness doctrine to such "editorial advertisements," *see, e.g.*, *NBC* (ESSO), 30 F.C.C. 2d 643 (1971), and *Media Access Project*, 44 F.C.C. 2d 755 (1973), was reaffirmed in the Commission's 1974 Report, 48 F.C.C. 2d 22-24.

II. *Implied Representations As Viewpoints*

The wisdom of the fairness doctrine as applied to explicit discussion of issues of public controversy, while not beyond dispute, is not disputed here. The question here is whether that doctrine should be applied to routine advertising of commercial products the use of which may be publicly controversial. The question is broadly phrased in terms of product advertising generally and not with specific reference to current proposals to apply the doctrine to alcoholic beverages. As *Friends of the Earth* makes plain the "principle" of *Banzhaf* lies not in the nature of the product, but in the notion that product messages implicitly "raise" whatever controversial issues that may surround their use. It was precisely in recognition of this point that the FCC in 1974 found it necessary not merely to limit the reach of the cigarette ruling but to confess error and repudiate it entirely. 48 F.C.C 2d at 24-26.

To be sure not every product advertisement implicates an issue of important public controversy. No doubt the Commission was on firm ground when in 1972 it ruled that dog food commercials did not involve a matter of important public controversy about the health hazards of dogs by implictly representing that dogs are "man's best friend." *Children Before Dogs*, 37 F.C.C. 2d 647 (1972). So too when it rejected a fairness complaint directed against trash compactor commercials that were alleged to imply a negative viewpoint on the issue of recycling. *John S. McGinnis* (Consumers Arise Now), F.C.C. 8330-N (1971). But it takes little imagination to find public controversy -- important controversy -- lurking in the background of the most innocuous commercials. As Henry Geller noted in an extensive study of the fairness doctrine prior to the FCC's 1974 Report:

> "There are relatively few advertised products whose normal use does not involve some significant issue: automobiles (large and small), gasoline (leaded or unleaded), any type of medication, beer, airplanes, any product that does not have a biodegradable container, any foreign product -- the list is virtually endless."

H. Geller, The Fairness Doctrine in Broadcasting, 85 (Rand, 1973); *see also* Jaffe, *The Editorial Responsibility of the Broadcaster: Reflections on Fairness and Access*, 85 Harv. L. Rev. 768, 775 (1972).[3]

For that matter, there is no clear basis for stopping with product advertisements. If viewpoints on controversial public issues may be implied from the promotion of products whose use is controversial, it would seem equally logical to imply them from entertainment or informational programs as well. Simmons, *Commercial Advertising and the Fairness Doctrine: The New F.C.C. Policy in Perspective*, 75 Colum. L. Rev. 1083, 1115-16 (1975).

National Organization for Women v. FCC, 555 F.2d 1002 (D.C. Cir. 1977), illustrates just how expansively the underlying "principle" of implied representations can be applied. The National Organization for Women challenged the renewal of two stations on grounds, *inter alia*, that their programs and commercial ads depicted women as "incompetent, dependent, overemotional and irresponsible" whose proper role was in the home "serving their husbands and children." 555 F.2d at 1013. This biased portrayal allegedly raised a controversial issue of public importance -- "the role of women in society." Principal reliance was placed on *Banzhaf* and *Friends of the Earth* for the claim that such implied representations fell within the reach of the fairness doctrine. (Among the specific program instances were a number of commercials in which women were depicted either as essentially household servants or sex objects). Having earlier repudiated the principle of *Banzhaf* and *Friends of the Earth*, the Commission had no difficulty ruling that any implicit messages about women's roles (conceded to be an issue of important public controversy) did not fall within the fairness doctrine. It also found that in any event the issue of women's role had been given reasonably balanced treatment. The court affirmed on the latter ground. If the *Banzhaf* principle were given full rein, there would be no end to complaints like NOW's. *See, e.g. George D. Corey*, 37 F.C.C. 2d 641 (1972) (complaint that children's programs containing violent incidents triggered fairness doctrine); *David Hare*, 35 F.C.C. 2d 868 (1972) (complaint that "Daniel Boone" series raised issue of how Indians were treated); *Thomas E. Mitchell*, 54 F.C.C. 2d 593 (1975) (complaint that police drama raised issue of gun control).

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[3] Affirming the FCC's abandonment of the *Banzhaf* principle the court of appeals similarly noted the wide range of products to which it could be applied as well as the great uncertainty in determining what ads do or do not trigger a fairness obligation. *See National Citizens Comm.*, *supra*, 567 F. 2d at 1110.

Of course, not all complaints would be successful; both licensees and Commissioners have discretion in determining whether an issue of important public controversy is involved and in evaluating whether reasonable balance had been maintained. *NBC v. FCC*, 516 F.2d 1101 (D.C. Cir. 1974), *cert. denied*, 424 U. S. 910 (1976). However, if the fairness doctrine is given a part of the range of application its active supporters have sought, licensee discretion could not be sufficient defense against the onslaught of complaints that a revitalized *Banzhaf* would invite.

III. *The Domain of Fairness As a Legal Rule*

"Slippery slope" arguments are not, of course, decisive on whether to extend a legal rule to new terrain; they merely describe the domain of the rule and the applications that must be justified. When the Commission in 1974 examined the expansive domain of its cigarette ruling it concluded that the mechanically pervasive application of the fairness doctrine implied by its 1967 decision could not be justified. It was a wise judgement.

There is, first, the problem of avoiding trivial pursuits. The Commission was rightly concerned that applying the fairness doctrine to implied messages would engage it in endless, inconsequential controversies over product advertisements (and even implied messages in ordinary program material). One need not imagine the Commission would be overwhelmed by such a task in order to be concerned about pointless adjudications over the implicit messages of any advertising slogan the fecund imagination of viewers or listeners can discern. Are detergent ads showing women fussing and fretting over the whiteness of their husbands shirt collars a statement about the domestic role of women? Do automobile ads that promote passenger safety features imply a message about airbags? Do cereal ads promote a point of view about nutritional needs? Do ads for toy weapons contain a message about violence?

Granted the controversial issues themselves may be a matter of public importance, it is credulous to think the messages that are derived from the ads are a substantial or meaningful occasion for deciding whether the issues have been given fair and balanced treatment. As the Commission said in its 1974 Report, 48 F.C.C. 2d at 26:

> "[W]e do not believe that the usual product commercial can realistically be said to inform the public on any side of a controversial issue of public importance. It would be a great mistake to consider standard advertisements, such as those involved in *Banzhaf* and *Friends of the Earth*, as though they made a meaningful contribution to public debate."

Insistence on "meaningful" discussion has been a standard requirement of fairness doctrine as applied by agency and affirmed by the courts in other contexts. *See, e.g., American Security Council Educ. Found. v. FCC*, 607 F. 2d 438, 450 n. 39 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1013 (1980). The FCC's 1974 Report merely aligned advertising messages with that general requirement, again with the courts' clear approval. *See National Citizens Comm., supra*, 567 F. 2d at 1109-10; *Public Interest Research Group, supra*, 522 F. 2d at 1066.

The principle of meaningful discussion rests in part on the need to avoid placing unncessary burdens on licensees who would be hard pressed even to know what their obligations are, let alone meet them, if virtually any program or commercial ad could trigger a complaint. *See American Security Council, supra*, 607 F.

2d at 450-51.[4]

Another, equally important, concern is that a formalistic application of the fairness concept undermines its credibility and integrity in other cases where its application has always been deemed most important -- those involving explicit and substantial discussion of important public issues. A mechanical application of fairness obligations not merely "diverts the attention of broadcasters from their public trustee responsibilities in the development of an informed public opinion," 48 F.C.C. 2d at 26, it also fundamentally misdirects the *Commission*'s energies in overseeing broadcasters.

The kind of administrative monitoring and enforcement implied by a mechanical application of the fairness doctrine to covert and overt messages alike would impose excessive costs on radio and television. Considering just the impact on commercial advertising and finessing the impact on regular programming, an aggressive enforcement of the *Banzhaf* principle could substantially undermine the advertising base of commercial radio and television. It seems inevitable that effective enforcement of the fairness doctrine would require extensive resort to counter advertising announcements as a means of ensuring compliance. Indeed, that appears to be the avowed aim of those who currently propose revitalizing *Banzhaf*. This would produce a twofold effect. One, such ads would displace regular commercials and, since it is unlikely that the counter ads would be sponsored, the station would have to bear the opportunity cost of the displacement. *See Cullman Broadcasting Co., Inc.*, 40 F.C.C. 576 (1963). Two, apart from this displacement effect counter ads would probably cause some advertisers to shift to print media in order to avoid inviting negative claims about their products. Industry estimates, prepared in the 1970's, of just the costs of advertising displacement suggest disastrous impact on broadcast revenues. *See* Simmons, *supra*, 75 Colum. L. Rev. at 1111. *See also* Jaffe, *supra*, 85 Harv. L. Rev. at 775 (*Banzhaf* "logic can be expanded to justify so many demands for free time as to threaten broadcasting's advertising base").

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[4] Evidence of the uncertainty can be found in a comparison of court decisions construing *Banzhaf*. *Compare Banzhaf*, *Retail Store Employees* and *Friends of the Earth*, each finding the fairness doctrine applies, *with Green* and *Neckritz v. FCC*, 502 F. 2d 411 (D.C. Cir. 1974), finding it did not. The Court in *National Citizens Comm.*, 567 F. 2d 1101, conceded that the opinions caused understandable confusion. A careful reading of the opinions indicates that concession to be an understatement.

There is, of course, much speculation in any such estimate — speculation about the level of administrative enforcement as well as about how advertisers would respond. What does seem clear is that the economic costs of faithful enforcement of the *Banzhaf* principle would be very large. Against those costs must be weighed the putative benefits of a fuller discussion of the affected issues of public controversy. Those benefits, as suggested earlier, are altogether modest, not because there is no value in encouraging debate on issues of public importance but because seizing on innocuous commercial advertising as the vehicle for such discussion would be clumsy and ineffectual.

IV. Constitutional Implications

The constitutionality of the fairness doctrine was affirmed in *Red Lion Broadcasting Co., Inc. v. FCC*, 395 U.S. 367 (1969), and we may assume the continued force of that holding despite recurrent speculation that changes in the technological conditions that were its central premise might induce the Court to reconsider the matter.[5]

However, the Court has never held or hinted that all applications of the fairness doctrine are immune from First Amendment scrutiny. In *Red Lion* the Court was careful to note that it was not called on to approve every aspect of the doctrine, 395 U.S. at 366. Lower courts since *Red Lion* have emphasized the constitutional importance of cautious and conservative applications of the fairness doctrine — applications that, one, allow broadcasters to gauge their obligations with predictability, and, two, give reasonable latitude to editorial discretion. *See, e.g., American Security Council, supra.* An expansive application of the fairness doctrine to implied as well as express "messages" on matters of public controversy would present substantial constitutional issues insofar as it would impose vague and open-ended obligations that would be difficult even to define let alone meet. *See National Citizens Comm., supra,* 567 F. 2d at 1110 (noting the uncertainties created by the *Banzhaf* principle).

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[5] The Court itself has discouraged speculation that it would reconsider on its own initiative, without guidance from Congress or the FCC. *See FCC v. League of Women Voters of California,* 104 S.Ct. 3106, 3116 n. 11 (1984).

The fact that the "messages" are contained in commercial advertisements would not, of course, pretermit constitutional scrutiny. *See Virginia State Board of Pharmacy v. Virginia Citizen Consumer Council Inc.*, 425 U.S. 748 (1976); *Central Hudson Gas and Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980). While the Court has indicated that commercial speech may not warrant the same standards of constitutional scrutiny as noncommercial speech, it has made clear that, governmental restriction even of *purely* promotional advertising — with no express or implied viewpoint on matters of public controversy — will be examined closely to determine whether the "asserted governmental interest is substantial," whether the "regulation advances the governmental interest asserted," and whether it is "not more extensive than necessary to serve that interest." *Central Hudson Gas*, *supra*, 447 U.S. at 566. This balancing test has been applied even to regulation of deceptive advertising to ensure that remedies are not broader than reasonably necessary to correct the deception. *See*, *e.g.*, *Beneficial Corp. v. FTC*, 542 F. 2d 611 (3d Cir. 1976) (invalidating portion of overbroad FTC remedy). Application of such a balancing test is even more compelling in the context of the fairness doctrine for its application assumes that the speech involved addresses issues of public importance and controversy — matters which rest on "the highest rung of the hierarchy First Amendment values." *FCC v. League of Women Voters*, *supra*, 104 S. Ct. at 3118.

Although the Court in *Central Hudson* dealt with a total ban on promotional speech, its general insistence on a reasonable balance between benefits and costs appears equally pertinent here. As we noted the economic costs of such an application, while difficult to define, are certain to be large were the Banzhaf principle given its logical range of application. Against those costs must be weighed, of course, the benefits of counter advertising campaigns seeking to tell the "truth" about the use of automobiles, snowmobiles, sugared cereals, detergents, lite beer, trash compactors, dogs and (in the name of balance) cats. Even assuming a cost-benefit balance might be favorable in some instances, if there is no clear or principled basis for choosing among particular applications, we must consider the aggregate balance of benefits and costs that emerges from a consistant application of the Banzhaf principle; it is distinctly negative.

V. Conclusion

The public concern over alcoholic abuse that underlies proposals to apply the fairness doctrine to advertisements of alcoholic beverages is unquestionably legitimate and deeply felt — as was the concern over smoking in the 1960's and the concern over pollution in the 1970's — and so they are still. In the face of such large and vexing social problems the instinct to grasp for easily defined solutions is as natural as the concern over the problem itself. As is the disposition to look to the media — particularly the electronic media — as the key to the solution: if the "vast" influence of the media can be brought to bear on the problem . . . .

And to problem solvers who are so disposed, the fairness doctrine offers an alluringly simple, effective means for guiding the power of the media to the desired end. Unfortunately, experience and reflective thought on the implications of the solution cast lavish doubt on the assumed simplicity or ultimate effectiveness of the fairness doctrine as a nostrum for ailments that are deeply rooted in social habits. The media may be partly accountable for those habits; and they may have a role in correcting those that are socially harmful. But an aggressive application of the fairness doctrine would not be a useful tool in enhancing that role.

The fairness doctrine was never imagined by the FCC, by the courts or by Congress to be a free-roving mandate to scrutinize all program content (advertising included), to determine its public significance or to measure its social responsibility. As an enforceable legal duty (as opposed, perhaps, to an ideal of general social responsibility) fairness in programming has always been a discrete, limited concept. Its enforcement by the FCC, its acceptance by the courts, and ultimately its acceptance to Congress and the public, have rested on the notion that enforced fairness was a tool to correct clear licensee error or abuse in treating controversial public issues, not an all-purpose mechanism by which to shape radio and television programs according to administratively determined social ends.

APPENDIX B

Teen Viewing

Program Type	Teen Rating %	# Viewers ('000)	Teen % of Total Persons Audience
General Drama	7.5	1,610	6.8
Suspense & Mystery	7.4	1,590	7.7
Situation Comedy	10.3	2,210	11.0
Adventure	10.9	2,340	10.8
Feature Film	8.7	1,860	9.0
All Weekend Sports	1.9	400	7.0

Source: A.C. Nielsen Co., January 18, 1985

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APPENDIX C

EXAMPLES OF ALCOHOL-RELATED BROADCAST PROGRAMMING

The enclosed examples include editorials, news stories, community outreach programs and public affairs programs on both radio and television.

The cover sheet to each example explains the type of programming and the source.

EDITORIALS

Card

ALCOHOL ABUSE AND DRUNK DRIVING CLEARINGHOUSE

TITLE: Drinking Drivers

SUBJECT: Drunk driving

SUMMARY: Supports suspension of drivers' license administratively, rather than through the Court system which allows problem drinkers to continue to drive.

TYPE: Editorial
LENGTH: 350 words
AUDIENCE: Adults
SPONSOR/PRODUCER:
FORMAT: Script
CONTACT:
PERMISSION:
USE LIMITED:
YEAR: Broadcast Dec. 13, 1984
EXPIRATION DATE:
COMMENTS:

STATION: Radio
CALLS, CITY: WGN-AM, Chicago
STATE: IL

RECEIVED IN HOUSE: Yes
ACCESSION NUMBER: R659

BEST COPY AVAILABLE

WGN Editorial

ROBERT D. MANEWITH
editorial director

© Copyright 1984, WGN Radio 720AM, 2501 Bradley Place, Chicago IL 60618—312-883-3100

"DRINKING DRIVERS"

Editorial #84-204
Thursday, December 13, 1984

Because alcohol is involved in some two million motor vehicle accidents each year, we believe it is essential to do more to keep drunk drivers off our roads. That's why we support a legislative request of Illinois Secretary of State Jim Edgar.

Edgar wants Illinois to join the nearly two dozen other states which authorize the licensing authority --- in Illinois, that's the Secretary of State --- to suspend a driver's license for up to six months ADMINISTRATIVELY, not through a court process, under one of two conditions. The first condition would be the results of a chemical test which show a blood alcohol level above the legal limit. The second condition would be a driver's refusal to take such a test after being stopped because police suspect drunk driving.

Under present law, refusal to take the test is grounds for suspension, but only after the case comes to court. In the meantime, that driver continues to drive. And the courts, even in cases where a driver IS found guilty, today take driving privileges away in only 30 per cent of the cases.

The Secretary of State already can suspend driving privileges prior to a court hearing ... if there is an accident involving death or serious bodily injury. But, this still leaves thousands of drivers, people involved in less serious accidents, behind the wheel.

The possible loss of driving privileges is believed to be the most significant deterrent to driving while under the influence. Secretary Edgar's proposal will add significantly to that deterrence. It should be given prompt consideration when the General Assembly meets in January.

R.E. 59

In the meantime, as we head into the holiday season, remember this!` If you have to ask yourself if you're too drunk to drive, you are!

ALCOHOL ABUSE AND DRUNK DRIVING CLEARINGHOUSE

TITLE: Battling Holiday Drunk Driving

Ard

SUBJECT: Drunk driving

SUMMARY: In an effort to reduce DWI accidents and deaths, CA traffic officers have come up with new approaches: unannounced target areas, sobriety checkpoints.

TYPE: Editorial
LENGTH: 280 words
AUDIENCE: Adults
SPONSOR/PRODUCER:
FORMAT: Script
CONTACT:
PERMISSION:
USE LIMITED:
YEAR: Broadcast Nov. 21, 1984
EXPIRATION DATE:
COMMENTS:

STATION: Radio
CALLS, CITY: KNX-AM, Los Angeles
STATE: CA

RECEIVED IN HOUSE: Yes
ACCESSION NUMBER: 8556

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KNX NEWSRADIO 1070 [illegible]

EDITORIAL

[illegible]

SUBJECT: Battling Holiday Drunk Driving
84-209

BROADCAST: November 21, 1984
9:18AM, 12:18, 6:18, 10:18PM

Tomorrow is Thanksgiving Day, which means the holidays are officially upon us. More than a month of family get-togethers, office parties and good cheer. But KNX urges you to make sure all that merriment doesn't end in tragedy. This holiday, don't drink and drive.

This time last year, there were nearly 200 fatal traffic accidents between now and New Year's as a result of drunk driving. In an effort to reduce those figures, California law enforcement has come up with some new approaches to the problem.

In the San Fernando Valley, for example, traffic officers will be concentrating their efforts in specific areas rather than spreading themselves thin over the entire region. Those target areas will remain unannounced, and the Valley Traffic Division hopes to beef up its drunk driving arrests by at least 25 percent.

Then, later in the season, the California Highway Patrol will get into the act, stopping motorists at designated "sobriety checkpoints" to check for signs of intoxication.

KNX hopes these new techniques are successful in reducing the carnage of drunk driving, but we're saddened that it takes scare tactics to call people's attention to a problem that should require nothing more than common sense. After all, we've all seen the results of drinking and driving--in driver training films, on news reports or even as eyewitnesses. And most of us know the safety tips by heart--carpool with a non-drinker, monitor your intake or take a cab.

This year, KNX hopes we'll all start acting on those recommendations instead of just parroting them. If we do, we can make it a happier holiday season for everyone.

KE56

Card

ALCOHOL ABUSE AND DRUNK DRIVING CLEARINGHOUSE

TITLE: Students against Drunk Driving

SUBJECT: Drunk driving

SUMMARY: General Manager cites US Surgeon General report that the lif expectancy of 15-24 year olds has not improved over the past 75 years unlike other age groups. Drunk driving is leading cause of death fo this age group. Outlines S.A.D.D.'s "Contract For Life" agreement where to get a copy. Urges use of contract.

TYPE: Editorial
LENGTH:

AUDIENCE: All ages
SPONSOR/PRODUCER:
FORMAT: Script
CONTACT:
PERMISSION:
USE LIMITED:
YEAR: Dec 1984
EXPIRATION DATE:
COMMENTS:

STATION: Radio
CALLS, CITY: WCBS AM/FM, New York
STATE: NY

RECEIVED IN HOUSE: Yes
ACCESSION NUMBER: RE116

WCBS ALL-NEWS 88

EDITORIAL

This is one of a continuing series of WCBS Radio editorials expressing the opinion of station management on topics of vital interest to the community. Responsible representatives of opposing viewpoints are given the opportunity to reply on the air. If you missed the broadcast of this editorial, we hope you will read it. Your comments are always welcome.

James McQuade, Vice President, CBS Radio Division
General Manager, WCBS Radio

Students Against Driving Drunk
84-28

(Now a WCBS editorial. Here is Vice President and General Manager James McQuade.)

This is National Drunk and Drugged Driving Week. Here are a couple of startling facts about which we should all be aware: The Surgeon General of the United States says that the life expectancy for every age group has improved over the past 75 years -- except for one -- the 15 to 24 year olds; And according to the National Transportation Safety Board, the leading cause of death in that age group is drunk driving.

A national organization of young people called Students Against Driving Drunk is trying to change those statistics by having young people enter into a so-called "Contract for Life" with their parents. It's a simple written agreement. The young people promise to call home for a ride if they have been drinking, the parents agree not to hassle them about the incident then and there, but rather discuss it calmly and coolly at a later date. The parents also agree to seek safe, sober transportation home themselves if they've had too much to drink. It's clearly a life-saving agreement on both parties' part.

If projections are correct, in 1985, 27,000 Americans will die on our highways because of the lethal combination of drinking and driving. A "Contract for Life" might prove those projections wrong.

You can obtain a copy of the "Contract for Life" from the national headquarters of Students Against Driving Drunk or you can write to WCBS and we'll sent one to you directly. The address is WCBS Radio, 51 West 52 Street, New York, New York, 10019.

Write for a copy of the "Contract for Life" today. Sign it when you get it and then honor it. It may very well be the best deal you ever made.

broadcast: December 12, 1984, 9:50 AM, 12:50, 8:50 PM
December 13, 1984, 1:50 AM

RE #6116

NEWS STORIES

ALCOHOL ABUSE AND DRUNK DRIVING CLEARINGHOUSE

TITLE:

SUBJECT: Drunk driving

SUMMARY: Six part series

TYPE: News story
LENGTH:
AUDIENCE: Adults
SPONSOR/PRODUCER:
FORMAT: Other - letter
CONTACT: Bob McRaney
PERMISSION:
USE LIMITED:
YEAR: December, 1984
EXPIRATION DATE:
COMMENTS:

STATION: TV
CALLS, CITY: WWBT-TV, Richmond
STATE: VA

RECEIVED IN HOUSE: No
ACCESSION NUMBER: TN15

[illegible]
Richmond, Va. 23261
Telephone 233-5461

WWBT

Jefferson
Pilot
Broadcasting

January 3, 1985

Mr. John Summers
National Association of Broadcasters
1771 N. Street N.W.
Washington, D.C. 20036

Dear John:

All of us in broadcasting have been intensely aware of the concern over the dangers of drunk driving. In accordance with both the Virginia Association of Broadcaster's, as well as the National Association of Broadcaster's efforts, WWBT produced a series of public service spots and a telethon on New Years Eve which developed considerable impact here in Richmond and throughout Central Virginia.

I thought you might be interested in knowing the details of this particular project which is only the beginning of our year-long 1985 drunk driving alert campaign. We will be happy to respond to any questions you might have, but I wanted you to be aware of our efforts over this past holiday period to focus attention on the evils of drinking and driving. Certainly we are all aware of the need to develop as positive approach as possible to this highly sensitive issue.

For your information.

Sincerely,

Bob McRaney, Jr.

BMc: mt

Attachment

[illegible]8

TN [illegible]15

• CHARLOTTE, NC WBT WBCY WBTV Jeffersonics Jefferson Productions Jefferson Data Systems
• RICHMOND, VA WWBT • ATLANTA, GA WQXI-AM WQXI-FM • DENVER, CO KIMN KYGO
• MIAMI, FL WGBS WLYF • GREENSBORO, NC WBIG • WILMINGTON, NC WWRL WHSL

RESEARCH BULLETIN
5710 MIDLOTHIAN TURNPIKE
RICHMOND VA 23201 (804)233-5461

WWBT/12

THE WWBT "DRIVE SOBER ALERT" PROJECT

WWBT began the "Drive Sober Alert" Project December 9, 1984 which marked the beginning of National Drunk and Drugged Driving Awareness Week.

Two (2) PSA's produced by WWBT began airing 4-6 times a day (PSA's on attached cassette).

December 26, 1984, the WWBT News Department began a six-part series on drunk driving which aired at 6:00 pm and 11:00 pm ending on December 31, 1984.

December 31, 1984 beginning at 6:10 a.m., WWBT began the WWBT "Drive Sober Alert" Mini-thon. Every hour from 6:10 a.m. December 31 to 1:00 a.m. January 1, WWBT made available one-minute cut-ins detailing some aspect of drunk driving. The subjects covered in the cut-ins were:

- New Drunk Driving Legislation
- How to be a good host, Parts I & II
- Who to call for a ride home if you're drunk
- What it takes to be legally drunk
- The Kevin Mahan Story
- Students Against Drunk Driving
- Mothers Against Drunk Driving
- Field Sobriety Test (One Leg Stand)
- Field Sobriety Test (Walk & Turn)
- Field Sobriety Test (Eye Movement)
- How to report a drunk driver, Parts I & II
- The Liz Hoke Story

All the cut-ins were written and produced by WWBT. Information, in part, was provided by the Virginia Alcohol Safety Action Program and the Richmond area chapter of Mothers Against Drunk Driving.

Additionally, December 31, WWBT aired two (2) 30 second spots broadcasting the phone number of organizations that would

TN 15

ALCOHOL ABUSE AND DRUNK DRIVING CLEARINGHOUSE Card

TITLE: News Stories

SUBJECT: Other-Candle-light demonstration death of Rock Star-DWI

SUMMARY: As part of news reported on candlelit gathering of persons sympathetic to victims of drunk drivers. Report on death of Rock Star, and injury of another due to drinking and driving.

TYPE: News story
LENGTH: :15 and :36
AUDIENCE: All ages
SPONSOR/PRODUCER:
FORMAT: Script
CONTACT: Ellen Berk
PERMISSION:
USE LIMITED:
YEAR: Broadcast December 10, 1984
EXPIRATION DATE:
COMMENTS:

STATION: Radio
CALLS, CITY: KAZY-FM, Denver
STATE: Co

RECEIVED IN HOUSE: Yes
ACCESSION NUMBER: 9424

7:50 AM NEWS.12-10-84 FM

TRAFFIC OFFICER DON CURTIS:

Q"KAZY"

WASHINGTON

YOU'RE GOING TO HEAR A LOT ABOUT DRUNK DRIVERS THIS WEEK,ACCORDING TO CORRESPONDENT C.D.JACO:

Q"DRUNK DRIVERS":15

LAST NIGHT,ABOUT A HUNDRED PEOPLE GATHERED ON THE STEPS OF THE STATE CAPITOL,IN DENVER,HOLDING RED AND WHITE CANDLES.THE RED CANDLES WERE FOR THOSE WHO HAD LOST LOVED ONES DUE TO DRUNK DRIVERS,THE WHITE CANDLES WENT TO THOSE WHO SYMPATHIZE WITH THE VICTIMS,AND MADD'S STAND.

MEANWHILE,DRINKING AND DRIVING HAVE ADDED UP TO DEATH FOR A DRUMMER:

Q"THE SOURCE":34

IT'S GOING TO GET HARDER TO FIND AND KEEP A JOB IN THE DENVER AREA,ACCORDING TO A NEW STUDY BY MANPOWER,INC.THE SURVEY SHOWS THAT MORE EMPLOYERS WILL BE LAYING OFF WORKERS THAN WILL BE HIRING IN THE FIRST QUARTER OF NEXT YEAR,IN DENVER.THE SAME GOES FOR BOULDER.IN CONTRAST,THE SURVEY SHOWS [illegible] EMPLOYERS AROUND THE COUNTRY EXPECT TO HIRE MORE PEOPLE,WHILE JUST TWELVE PERCENT EXPECT TO LAY OFF EMPLOYEES.

A NEWLY ELECTED STATE SENATOR WANTS TO PULL THE TEETH OUT OF THE UNIVERSITY OF COLORADO DENTAL SCHOOL.SENATOR ELECT STEVE DURHAM,OF COLORADO SPRINGS,PLANS TO INTRODUCE A BILL THAT WOULD PHASE OUT THE CU SCHOOL OF DENTISTRY OVER THE NEXT FOUR YEARS.DURHAM FEELS THAT THE $3½ MILLION SPENT ON THE SCHOOL ANNUALLY COULD BE PUT TO BETTER USE ELSEWHERE IN THE STATE'S HIGHER EDUCATION SYSTEM.

TIME...SPOT...Q"GO ON [illegible] AND ON":60

IN SPORTS,THE BRONCOS ONCE AGAIN SHARE FIRST PLACE IN THE AFC WEST WITH THE SEATTLE SEAHAWKS THIS MORNING.THAT'S BECAUSE THE BRONCOS TOOK THE CHARGERS 16-13 YESTERDAY,WHILE THE SEAHAWKS WERE GETTING THEIR WINGS CLIPPED BY THE KANSAS CITY CHIEFS,34-7.AND,THE LOS ANGELES RAMS' ERIC DICKERSON BROKE O.J. SIMPSON'S SINGLE SEASON RUSHING RECORD YESTERDAY,AS THE RAMS BEAT HOUSTON.

KAZY-FM Denver CO

~~RN2~~ RN24

6:50 AM NEW.12-10-84 FM

TRAFFIC OFFICER DON CURTIS:

Q"KARYN"

THIS IS NATIONAL DRUNK DRIVER AWARENESS WEEK...AND ABOUT ONE HUNDRED PEOPLE GOT GOING ON THE STEPS OF THE STATE CAPITOL LAST NIGHT.THEY HELD A CANDLELIGHT VIGIL TO COMMEMORATE THOSE WHO HAVE BEEN KILLED BY DRINKING DRIVERS.AND,THERE WILL BE MORE OF THAT KIND OF CEREMONY AROUND THE COUNTRY TODAY:

Q"THE SOURCE":36

MEMBERS OF THE ROCK COMMUNITY WERE REMINDED OF THE DANGERS OF DRUNK DRIVING OVER THE WEEKEND.DRUMMER NICHOLAS DINGLEY,OF THE PUNK ROCK BAND HANOI ROCKS,WAS KILLED SATURDAY NIGHT IN REDONDO BEACH,CALIFORNIA.DINGLEY DIED WHEN THE CAR [redacted] IN WHICH HE WAS RIDING CRASHED...AND THAT CAR WAS DRIVEN BY MOTLEY CRUE LEAD SINGER VINCENT WHARTON.WHARTON WAS BOOKED ON A CHARGE OF DRIVING UNDER THE INFLUENCE.HE'S NOW FREE ON BOND.

MEANWHILE,IT LOOKS LIKE MANDATORY SEATBELT LAWS ARE GAINING MOMENTUM:

Q"THE SOURCE":30

THE HOSTAGE CRISIS AT THE TEHRAN AIRPORT IS OVER.

"Wire your Type":30

RNA

KAZY-FM-Denver

6:50 AM MON.12-10-84 FM

IF YOU HAD BEEN NEAR THE STATE CAPITOL LAST NIGHT,YOU WOULD HAVE SEEN ABOUT A HUNDRED SOMBER PEOPLE HOLDING CANDLES ON THE CAPITOL STEPS.THEY WERE THERE TO MARK THE BEGINNING OF NATIONAL DRUNK DRIVER AWARENESS WEEK.THOSE WHO HELD RED CANDLES HAD LOST LOVED ONES DUE TO DRUNK DRIVERS.THOSE WITH WHITE CANDLES WERE SYMPATHIZERS:

Q"THE SOURCE":36

THE COMBINATION OF DRINKING AND DRIVING HAS ENDED THE LIFE OF ONE ROCK MUSICIAN OVER THE WEEKEND,AND MAY SERIOUSLY DAMAGE THE LIFE OF ANOTHER.DRUMMER NICHOLAS DINGLEY,OF THE PUNK ROCK BAND HANOI ROCKS,DIED IN A CAR CRASH IN REDONDO BEACH, CAL FORNIA,SATURDAY NIGHT...AND POLICE ARE BLAMING MOTLEY CRUE LEAD SINGER VINCE NEIL,WHOSE REAL NAME IS VINCENT WHARTON.DINGLEY WAS KILLED WHEN WHARTON'S CAR WENT OUT OF CONTROL AND CRASHED.POLICE BUSTED THE SINGER ON A CHARGE OF DRIVING UNDER THE INFLUENCE.HE'S BEEN RELEASED ON BOND.

MEANWHILE,THE MOVEMENT FOR MANDATORY SEATBELT LAWS IS PICKING UP STEAM:

Q"THE SOURCE":30

ONE OF THE TWO AMERICAN HOSTAGES WHO SURVIVED THE HIGHJACKING OF THAT KUWAITI ARILINER IN IRAN SAYS HE WAS TORUTURED BY HIS CAPTORS.NEW YORK BUSINESSMAN JOH COSTA SAYS THE TERRORISTS BURNED HIM WHILE TRYING TO GET HIM TO ADMIT BEING A CI AGENT.THE HOSTAGES WERE RESCUED BY IRANIAN TROOPS WHO STORMED THE PLANE YESTERD THE SOLDIERS CAPTURED THE HIGHJACKERS,AND IRAN SAYS THEY'LL BE PUT ON TRIAL,IN PUBLIC.

TIME...SPOT...Q"U.S. TEL (REC.REP.)":60

IN SPORTS,THE DENVER BRONCOS BEAT THE SAN DIEGO CHARGERS YESTERDAY,16-13,TO WIN BACK A SHARE OF FIRST PLACE IN THE AFC WEST.THEY'RE TIED WITH THE SEAHAWKS,WHO LOST TO KANSAS CITY YESTERDAY,34-7.RICH KARLIS BECAME THE HERO FOR DENVER BY KI THREE FIELD GOALS...INCLUDING A 28 YARDER WITH JUST TWO MINUTES LEFT IN THE GAM

KNZ
KAZY- Denver

5:50 AM MON.12-10-84 FM

THE TERROR IS OVER IN TEHRAN.IRANIAN TROOPS IN DISGUISE YESTERDAY STORMED THE
HIGHJACKED KUWAITI AIRLINER,ON THE GROUND AT TEHRAN AIRPORT.THEY RESCUED THE HIJ
[illegible] REMAINING HOSTAGES,AND CAPTURED THE HIGHJACKERS.TWO OF THE AMERICANS ABOA
WERE STILL ALIVE.AND,SO WERE TWO KUWIATIS WHO WERE THOUGHT TO HAVE BEEN KILLED A
FEW DAYS AGO.WE DON'T KNOW WHAT'S BEEN DONE WITH THE HIGHJACKERS.

FEDERAL AGENTS AND COPS FROM AROUND THE DENVER AREA TEAMED UP ON SEVENTEEN GAMBL
RAIDS YESTERDAY.THE RAIDS WERE DESIGNED TO BREAK UP A BOOKMAKING OPERATION THAT
ALLEGEDLY DOES HALF A MILLION DOLLARS WORTH OF BUSINESS A WEEK.[illegible] ELEVEN
PEOPLE WERE NAMED IN SEARCH WARRANTS,BUT NOBODY WAS BUSTED.HOWEVER,THE OFFICERS
DID CONFISCATE QUITE A FEW FINANCIAL RECORDS,AND OTHER EVIDENCE OF GAMBLING,ACCO
ING TO DENVER POLICE CHIEF TOM COOGAN.

NATIONAL DRUNK DRIVING AWARENESS WEEK BEGINS TODAY...AND QUITE A FEW PEOPLE HAVE
QUITE A FEW PLANS FOR IT,ACCORDING TO CORRESPONDENT C.D.JACO:
Q"BY DRUNK DRIVERS":15
MEANWHILE,DRUNK DRIVING HAS LANDED ONE ROCKER IN JAIL,AND ANOTHER IN THE GRAVE:
Q"THE SOURCE":35

IN SPORTS,THE BRONCOS ARE NOW TIED WITH THE SEAHAWKS FOR THE LEAD IN THE AFC WES
THAT'S BECAUSE DENVER TOOK SAN DIEGO,16-13 YESTERDAY,WHILE THE SEAHAWKS WERE SHO
DOWN BY THE KANSAS CITY CHIEFS,34-7.

BN2
KAZY.FM - Denver

COMMUNITY OUTREACH PROGRAMS

AND

PROMOTIONS

ALCOHOL ABUSE AND DRUNK DRIVING CLEARINGHOUSE

TITLE: WMAQ's Drunk Driving Campaign

SUBJECT: Drunk driving

SUMMARY: WMAQ worked with BADD committee to develop ways to reduc incidents of drunk driving throughout the year. Will continue thi activity.

TYPE: Community outreach
LENGTH:
AUDIENCE: All ages
SPONSOR/PRODUCER: WMAQ
FORMAT: Other - description
CONTACT: O.L. Wilkerson
PERMISSION:
USE LIMITED:
YEAR: 1984 - ongoing
EXPIRATION DATE:
COMMENTS:

STATION: Radio
CALLS, CITY: WMAQ-AM, WKQX-FM, Chicago
STATE: IL

RECEIVED IN HOUSE: No
ACCESSION NUMBER: RC8

WMAQ-AM670
WKQX-FM101.1

National Broadcasting Company Inc

Merchandise Mart Plaza
Chicago IL 60654 312-861-5555

O. Lawton Wilkerson
Manager, Community Affairs

February 11, 1983

Gentlemen:

We are pleased to send this information on behalf of WMAQ's Drunk Driving Campaign. We look forward to including it as a portion of your presentation.

WMAQ's Drunk Driving Campaign began with station promos over the Thanksgiving holidays wishing listeners a Happy Thanksgiving and reminding them that drunk driving kills. We ran approximately 48 promos over the four day weekend.

After the Thanksgiving holidays WMAQ, in cooperation with the Illinois Broadcasters Association, aired PSA's using the voices of our talent endorsing pre-recorded messages condemning drunk driving. These messages were done for the IBA by Peter Faulk and Martin Sheen. We ran 44 PSA's per week between November 27th and January 2nd.

Believing the "celebrity" approach to be effective, WMAQ recorded special PSA's at a concert we were involved in locally. We wrote copy that was recorded by Mickey Skaggs, Merle Haggard and Lee Greenwood at the concert and tagged by our talent in the studio. "Generic" versions of the artists' voice tracks were offered to the other members of the Radio Broadcasters of Chicago. These PSA's replaced the IBA/BADD spots in the 44/wk schedule which put BADD PSA's in every day part.

We were also involved in a New Years Eve remote from another concert where our talent acted as MC's. They did "liners" all evening reminding listeners not to drive drunk. We also increased our PSA schedule over that weekend and on New Years Eve night.

WMAQ's News Department put extra emphasis on the police crackdown on drunk drivers over the holidays and underlined accidents caused by drunk drivers. We also did a half hour Public Affairs program on the hazzards of driving drunk and the efforts being made to recude the number of people who drink and drive. Representatives from five of the most active area groups working on the problem were guests on the show.

WMAQ worked with a "Broadcasters Against Drunk Driving" committee formed by the Radio Broadcasters of Chicago to develop ways to help reduce the incidence of drunk driving, not only during the holidays but also throughout the year. We will continue to be active with that committee as they plan new strategies and we will continue to run a PSA campaign with fresh copy periodically.

If I may be of any further assistance or if you need any additional information, we would be pleased to help.

RC 8

Sincerely,

ALCOHOL ABUSE AND DRUNK DRIVING CLEARINGHOUSE

Card

TITLE:

SUBJECT: Alcohol abuse

SUMMARY: Pennie Wells, Lifestyle Hostess for WFIN, did 5 interviews wit the Alcoholism council announcing their Support/Therapy groups.

TYPE: Community outreach
LENGTH:
AUDIENCE: All ages
SPONSOR/PRODUCER: WFIN
FORMAT: Other - letter
CONTACT: Pennie Wells
PERMISSION:
USE LIMITED:
YEAR: Broadcast 10/8 through 10/12/84
EXPIRATION DATE:
COMMENTS:

STATION: Radio
CALLS, CITY: WFIN-AM, Findlay
STATE: OH

RECEIVED IN HOUSE: No
ACCESSION NUMBER: RC11

Wfin AM1330 101 W. Sandusky St., Findlay, Ohio 45840 • (419) 422-4545

On October 8th through October 12th, I did five interviews with the Alcoholism Council announcing their Support/Therapy Groups. I talked with the five different counselors about their individual groups. I ended the week by talking with Jack Miller, who not only is the counselor for the Adult-Children of Alcoholism Group, but the Executive Director of the Alcoholism Council. During that interview we talked about Alcoholism itself.

Pennie Wells
Lifestyles Hostess

WFIN-AM
Findlay/OH

RC 11

ROCK 107
KAZY

cc: Ellen

LIVE COPY FOR KAZY/LOWENBRAU/CRESTED BUTTE :30

Air dates: ember 18th-28th, 5x per day Monday thru Sunday 6a-12M

This Christmas KAZY & Lowenbrau have a great way for you to help reduce Denver's alarming drunk driving rate, and we have a great way for you to spend a week in the mountains.........send your ideas and suggestions on ways to cut down the drunk driving statistics in our city, all entries received will qualify to win a week of lodging and lift tickets for 4 people at Crested Butte courtesy of the American Ski Association.......our address is:

STOP DRUNK DRIVING
KAZY 2149 South Holly
Denver, 80222

Remember, freinds don't let freinds drive drunk, here's to good freinds this Christmas, from Lowenbrau and KAZY!

#####

RPR 13A

A Group One Station • 2149 South Holly Street • Denver, Colorado 80222 • (303) 758-5800
KLZ • KAZY in Denver
WONE • WTUE in Dayton
WAEZ • WAKR • WAKR-TV in Akron
KMEZ AM/FM in Dallas

ALCOHOL ABUSE AND DRUNK DRIVING CLEARINGHOUSE

TITLE: WHTT Leads the Fight Against The Drunk Driver in MA Card

SUBJECT: Drunk driving

SUMMARY: Announced fight against DWI involvement of students, the governor, and public service programs to promote awareness. Dukakis first state CEO to get involved in anti-drunk driving campaign in 1983 resulting in 25% reduction in teen deaths.

TYPE: Promotion
LENGTH: 250 words
AUDIENCE: All ages
SPONSOR/PRODUCER:
FORMAT: Other-news release
CONTACT: David R. Austin
PERMISSION:
USE LIMITED:
YEAR: Broadcast June 11, 1984
EXPIRATION DATE:
COMMENTS:

STATION: Radio
CALLS, CITY: WHTT-FM, Boston
STATE: MA

RECEIVED IN HOUSE: Yes
ACCESSION NUMBER: RP332

For More Information Contact:
Gordon Hill, Director
News and Public Affairs
236-7926

For Immediate Release
June 11, 1984

WHTT LEADS THE FIGHT AGAINST THE DRUNK DRIVER IN MASSACHUSETTS

Boston radio station WHTT is once again targeting the drunk driver during its annual spring public service campaign.

This is the second consecutive year the CBS-owned station has worked with Governor Michael Dukakis in heightening public awareness about the consequences of drinking and driving.

Statistics show that of the 643 traffic deaths in Massachusetts last year, 225 were directly related to alcohol.

WHTT's campaign this spring includes a series of personalized public service announcements by Dukakis and twelve Students Against Driving Drunk (SADD) representatives from high schools in eastern Massachusetts.

Secretary of Public Safety Charles Barry was also a guest on WHTT's public affairs program "Encounter" discussing the controversial roadblock program and other law enforcement efforts to stop drunken driving.

The theme of the governor's campaign this year is "Drive Yourself to Think", a message that was printed on the reverse side of 60,000 of WHTT's "HITLISTS". They were distributed to nearly 100 record stores in the greater Boston area over a three week period in May and June.

Governor Dukakis is the first chief state executive in the nation to personally get involved in the anti-drunken driving campaign. The success of the first year's effort in 1983 can be measured in the 25 percent reduction in the number of teenagers killed in alcohol-related traffic accidents over prior years.

ALCOHOL ABUSE AND DRUNK DRIVING CLEARINGHOUSE Card

TITLE:

SUBJECT: Drunk driving

SUMMARY: Booklet describing station's designated driver program and campaign promoting. Copy of letter to Senator Richard Lugar is attached.

TYPE: Promotion
LENGTH:
AUDIENCE: Adults
SPONSOR/PRODUCER:
FORMAT: Other - Booklet - button
CONTACT:
PERMISSION:
USE LIMITED:
YEAR: 1985
EXPIRATION DATE:
COMMENTS:

STATION: TV
CALLS, CITY: WSBT-TV, South Bend
STATE: IN

RECEIVED IN HOUSE: Yes
ACCESSION NUMBER: TPR24

TV WSBT-TV
AM WSBT
FM WNSN 101.5

[illegible] WEST JEFFERSON BOULEVARD, SOUTH BEND, INDIANA [illegible] — TELEPHONE (219) [illegible]

January 25, 1985

The Honorable Richard Lugar
United States Senate
Washington, D. C. 20510

Dear Senator Lugar:

In cooperation with the National Association of Broadcasters and other local Broadcasters in the South Bend/Elkhart, Indiana area, the WSBT Stations of South Bend conducted what we feel was one of the most concentrated efforts ever undertaken by the Stations in behalf of a single goal: The removal of drunk drivers from our streets and roads.

Enclosed is a 6½ minute video tape that summarizes the activities of our Stations and a brochure briefly outlining all that was done in our "Designated Driver" campaign.

Knowing you share the universal concern about this problem, I felt you would be interested in the enclosed material.

From our standpoint, this is not a "one-shot" effort. The WSBT Stations plan to continue presenting informational announcements and programs throughout the year and, at appropriate specific times within the year, we plan to re-emphasize the "Designated Driver" campaign.

We are not naive enough to believe this effort will single-handedly eliminate this problem, but we do believe such a campaign can and does increase the public awareness of the problem and, by increasing public consciousness, the WSBT Stations believe a reduction in the number of incidents can occur.

Any thoughts or suggestions you might have concerning this effort would be appreciated.

Sincerely,

E. Berry Smith
President & General Manager

TPR [illegible]24

EBS:er

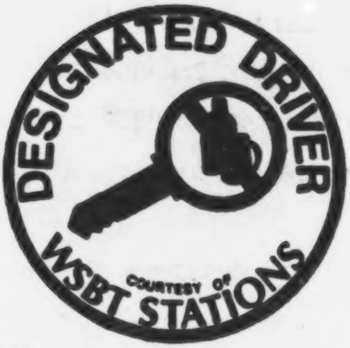
enclosures

DRUNK DRIVING:

A National Responsibility . . . A Local Solution

That's the challenge issued by the National Association of Broadcasters.

Here's how the WSBT Stations met that challenge...


DESIGNATED DRIVER
COURTESY OF
WSBT STATIONS

We designed and produced some 5,000 of these "Designated Driver" buttons in conjunction with the St. Joseph County Alcoholism Council. Most were distributed by beer wholesalers, Mothers Against Drunk Drivers and Students Against Driving Drunk to area bars and restaurants, many of which provided free coffee or soft drinks as an alternative for each group's "Designated Driver."

Next...

Specially-produced "**Designated Driver**" public service announcements were broadcast by WSBT-TV, WSBT(AM) and WNSN(FM). (Soon people were stopping by our studios to pick up buttons!)

The "**Designated Driver**" messages rotated with NAB drunk driving PSAs in what was probably the most intensive broadcast campaign in the stations' history.

For example...

During "National Drunk and Drugged Driving Awareness Week" from December 9th through December 15th, 1984, WSBT-TV's heavy schedule of drunk driving messages created more than 2½ million gross audience impressions.

22 Eyewitness News produced and aired a half-hour documentary as well as a three-part minidocumentary on the subject. The station's two editorials--broadcast two times apiece that week--addressed the problem; Eyewitness Midday had five relevant interviews.

Meanwhile, on radio...

WSBT broadcast a schedule of spots that netted 486,500 gross adult impressions. Live "drop-in" messages accounted for another 259,000 adult impressions.

WNSN reached an aggregate of 175,000 sets of adult ears with its drunk driving schedule.

Then...

"National Drunk and Drugged Driving Awareness Week" ended.

But not the WSBT Stations' information campaign --not with the deadly driving holidays still ahead. The on-air schedule was intensified. More buttons were distributed. Hanukkah and Christmas came and passed.

By the time the New Year arrived, some impressive goals had been reached.

All in all...

From December 9th through December 31st, the WSBT Stations--

- Broadcast over 1,000 messages against drunk driving--
- Amassed nearly 10 million adult impressions. That's an average of 17½ drunk driving messages for every man and woman in our Area of Dominant Influence.
- Provided in excess of $40,000 to the campaign in the value of the air time used and the cost of the **"Designated Driver"** buttons.

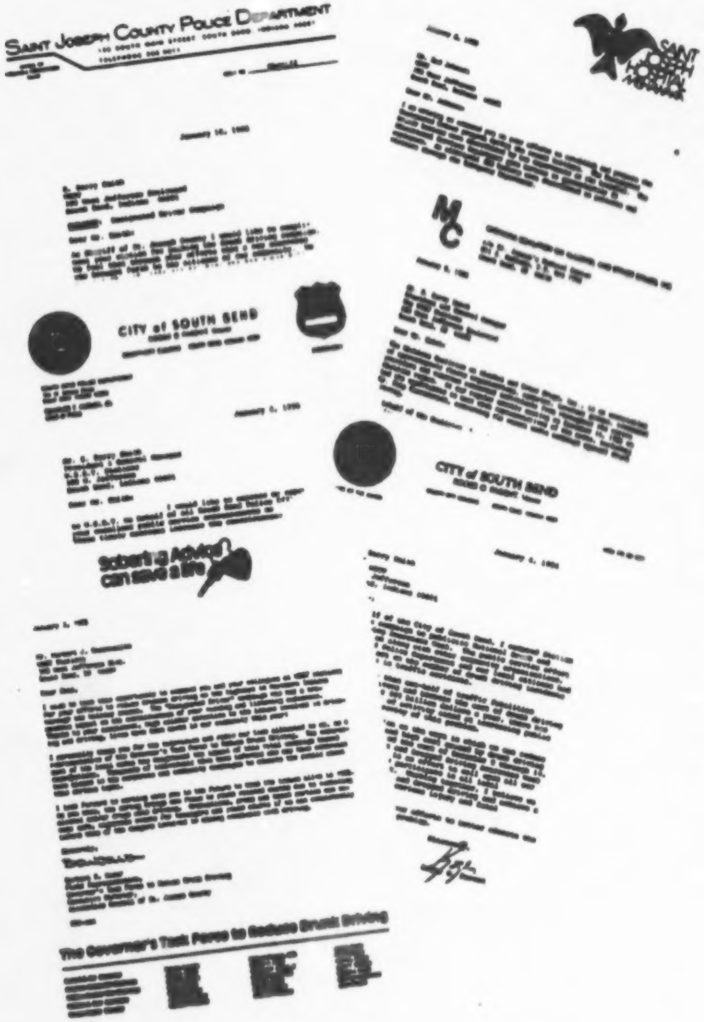
Civic and governmental cooperation in the campaign was superb. South Bend's Mayor issued an official proclamation urging observance of **"Awareness Week"**--while wearing a **"Designated Driver"** button.

And...

We got letters.

Letters of commendation and gratitude.

Like these...



SAINT JOSEPH COUNTY POLICE DEPARTMENT

SAINT JOSEPH HOSPITAL

CITY of SOUTH BEND

CITY of SOUTH BEND

Sobering Advice can save a life

The Governor's Task Force to Reduce Drunk Driving

Still to come...

BEST COPY AVAILABLE

The Holidays are over, but not the WSBT Stations' commitment to maintaining public awareness of the drugged and drunk driving problem.

That commitment will continue.

WSBT, Inc.
E. Berry Smith, President and General Manager
300 West Jefferson Boulevard
South Bend, Indiana 46601
(219) 233-3141

PUBLIC AFFAIRS PROGRAMS

ALCOHOL ABUSE AND DRUNK DRIVING CLEARINGHOUSE

Card

TITLE: Statewide Public Awareness Campaign

SUBJECT: Drunk driving

SUMMARY: David Lane, WFAA President, headed a press conference of the Texas Ass'n of Broadcasters, where 90% of Texas' television stations pledged 100 rating points per week during a 15 week drunk driving campaign, which will run from mid May until after Labor Day

TYPE: Public affairs program
LENGTH:
AUDIENCE: All ages
SPONSOR/PRODUCER:
FORMAT: Other - letter, description
CONTACT: David Lane
PERMISSION:
USE LIMITED:
YEAR: May through Labor Day 1985
EXPIRATION DATE:
COMMENTS:

STATION: TV
CALLS, CITY: WFAA-TV, Dallas
STATE: TX

RECEIVED IN HOUSE: No
ACCESSION NUMBER: TPA54

MAY 10 1985

Susan Hille
FYI

WFAA TV
Communications Center
Dallas, Texas 75202
214-748-9631

[illegible] Lane
President and
General Manager

May 2, 1985

Mr. John Behnke
President & CEO
Fisher Broadcasting Inc.
100 Fourth Ave. North
Seattle, WA 98109

Dear John:

This letter will bring you up to date on a couple of our efforts at WFAA-TV.

see TBA 118

"One Too Many" - We will blitz "on air" with promotion spots to support the program. All spots have been locally produced and feature various area leaders and me. We have had screenings with school officials and civic types. A personal letter over my signature was sent to school superintendents urging them to make this show required viewing for their students.

Our news department is producing several series (such as teenage alcoholism, laxity in enforcement of minimum age drinking law, etc.) that will air in conjunction with "One Too Many." Finally, we have formed a speakers bureau that will work with PTA groups and organizations to fill various programs through the early May period.

Ad Ban - I headed a Texas Ass'n. of Broadcasters' committee that organized and held a press conference in Austin on Tuesday, April 30. We announced a statewide public awareness campaign on the problems of drunk driving. The campaign will stretch from mid-May (before end-of-school activities) through Labor Day (end of summer). 90% of Texas' 62 television stations sent us letters of commitment pledging 100 rating points per week for this 15-week period. We have produced six different PSA's that will be distributed to the participating stations. Value of air time is estimated at $14 million.

Governor Mark White; Col. Jim Adams, head of Texas Dept. of Public Safety; and Marinell Timmons, Texas state director of MADD made statements at the press conference and endorsed the project. Over a dozen different news organizations were

TPA 54

in attendance and the television and print stories were very favorable. We will compile a report at the end of the summer and send our findings to every Representative and Senator from the state of Texas.

We will keep you informed of our progress.

Sincerely,

Dave

David T. Lane

DTL/sea

cc: Mr. Ward Huey, Belo Broadcasting
Mr. James Duffy, ABC Television
Mr. Richard Kozak, ABC Television
Mr. John Summers, NAB

ALCOHOL ABUSE AND DRUNK DRIVING CLEARINGHOUSE

TITLE:

SUBJECT: Alcohol abuse

SUMMARY: Description of 7 shows, all with guest speakers

TYPE: Public affairs program
LENGTH:
AUDIENCE: Adults
SPONSOR/PRODUCER:
FORMAT: Other - letter
CONTACT: Hal Kemp, Director of Special Projects
PERMISSION:
USE LIMITED:
YEAR: 1984
EXPIRATION DATE:
COMMENTS:

STATION: TV
CALLS, CITY: KHOU-TV, Houston
STATE: TX

RECEIVED IN HOUSE: No
ACCESSION NUMBER: TPA39

Public Affairs Programs
Alcohol Abuse
5/1/84 - 9/30/84
KHOU Houston

MORNING SHOW: 5/18/84 - Gracie McClure, Regional coordinator, Texas War on Drugs and Mark Evetts, Community Relations Manager, Cenikor, discussed efforts to inform parents about the dangers of alcohol abuse among children.

NEWSCENTER 11 AT NOON: 5/21/84 Marinelle Timmons, State Director, Mothers Against Drunk Drivers, discussed the effects on local business of a recent state court decision upholding the liability of employers who provide liquor at parties to their workers, then permit them to drive home.

MORNING SHOW: 5/22/84 - Marinelle Timmons, State Director, Morthers Against Drunk Drivers, discusses the work of her organization with high school students to acquaint them with the dangers of alcohol abuse and driving.

MORNING SHOW: 6/8/84 - Dr. Terry Rustin, Houston Regional Council on Alcoholism, Claudine Henderson, Houston Regional Council on Alcoholism, and Lowell Overby, Director, YMCA Alcohol Abuse program, discussed the groing problem of abuse in the Houston area, and discussed their attempts to educate children of alcoholic parents.

THIS WEEK IN GALVESTON: 7/1/84 Dr. James McCloy, Texas A&M University, discussed the high correlation between drinking and victims of drowning.

MORNING SHOW: 8/22/84 Marinelle Timmons, State Director, Mothers Against Drunk Drivers, discussed what she perceives is a need for the state legislature to pass an open container law and to raise the legal drinking age in Texas from 19 to 21.

THIS WEEK IN GALVESTON: Rev. Grayling Alexander, Alcohol Counselling and Recovery Program, discussed the problems of treating alcoholics in the Galveston area and pointed out some new work being done to include the families of alcoholics in treatment programs.

-0-

TPA 39

ALCOHOL ABUSE AND DRUNK DRIVING CLEARINGHOUSE

TITLE: Card

SUBJECT: Alcohol abuse

SUMMARY: Series of programs as part of "America on a Binge" campaign

TYPE: Public affairs program
LENGTH:
AUDIENCE: Adults
SPONSOR/PRODUCER:
FORMAT: Other - letter
CONTACT: Lew Schatzer
PERMISSION:
USE LIMITED:
YEAR: 1982
EXPIRATION DATE:
COMMENTS:

STATION: TV
CALLS, CITY: KTTV-tV, Los Angeles
STATE: CA

RECEIVED IN HOUSE: No
ACCESSION NUMBER: TPA41

MM
METROMEDIA INC
[illegible] WISCONSIN AVE, NW
WASHINGTON DC [illegible]
TEL [illegible]

PRESTON R. PADDEN
ASSISTANT GENERAL COUNSEL
AND ASSISTANT SECRETARY

November 27, 1984

Mr. Shaun Sheehan
Senior Vice President
for Public Affairs
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Re: Alcohol and Drug Abuse Task Force - Congressional Presentation

Dear Shaun:

As I indicated at our last meeting, it is our view that a Congressional presentation will be best received if it focuses upon the efforts of individual stations and state associations. In addition to the extent possible, our presentation should be targeted to key Congressional decision makers (e.g., the Texas Association's "Call A Friend" campaign would be particularly effective for House Majority Leader Wright).

A couple of years ago, Metromedia Station KTTV(TV), Los Angeles, California, broadcast a month-long series of special programs which focused on the subject of alcoholism. The campaign was entitled "America On A Binge". Transmitted with this letter is a copy of a promotional poster for this local station series and video cassettes of the following special programs:

"Can You Pass The Drinkers Test?"
"One Out Of Ten"
"Your Problems Are My Problems."
"Kids 'n' Booze: A "Minor" Problem"
"A Slight Drinking Problem"
"A.A.--An Inside View"
"A.A. In Action"

Additional information about this program series can be obtained from Mr. Lew Schatzer at Station KTTV (213-462-7111).

If we can be of assistance in connection with this project, please do not hesitate to call.

Very truly yours,

Preston Padden
Preston R. Padden

Enclosures.

cc: Task Force Members
Eddie Fritts
John Summers

AMERICA ON A BINGE / Specials produced by KTTV

CAN YOU PASS THE DRINKERS TEST - Sunday, April 5, 1981 60Min
Host Mike Farrell defines alcoholism and has the viewer test himself. A.A. testimonials underscore the significance of each question.

ONE OUT OF TEN - Sunday, April 12, 1981 30Min
Intro by Vikki Carr. Examines the drinking habit and associated problems of minority groups in Los Angeles.

YOUR PROBLEMS ARE MY PROBLEMS - Wednesday, April 15, 1981
Members of Alateen discuss problems of alcohol abuse on their lives.

KIDS N' BOOZE: A MINOR PROBLEM - Sunday, April 19, 1981 30 Min.
Janet Jackson and Matthew Laborteaux explore the problems of children of alcoholics and child alcoholics.

A.A. IN ACTION - Sunday, May 3, 1981 60 min.
Visit to an A.A. meeting

* * *

A VERY SPECIAL SPECIAL - April 12, 1983 60 Min.
Michele Lee and Ted Shackelford co-host this program produced by KTTV in association with the Southern California affiliates of the National Council on Alcoholism. Program offers positive alternatives to drinking and drug lifestyles. Dr. Joseph M. Cruse, Medical Director of the Betty Ford Center at Eisenhower Hospital in Rancho Mirage hosts portions of the program. Appearances by President Reagan, Claude Akins, Barbara Eden, Bob Hope, Gordon MacRae, Donald O'Connor, Dr. Joseph Mursch, M.D., Jason Robards, Rod Steiger, Sally Struthers, Ralph Waite, Carl Weathers, Dodger Pitcher Bob Walsh, Cindy Williams and Adrian Zmed.

* * *

KTTV STATE WIDE PSA PROJECT

In August, 1984, KTTV's General Manager, Bill White (Vice President of the California Association of Broadcasters) spearheaded a state-wide PSA campaign on behalf of the CAB. KTTV gathered all local and national DUI spots, chose the best of these spots for a special PSA package. These spots were tagged with the CAB logo. KTTV made video tape copies for all the stations in California and with the help of the California Association of Broadcasters distributed this package of PSA's to all the TV stations in the state...in time for a Labor Day Weekend DUI campaign.

* * *

GILDA FRANKLIN
Director of Public Affairs

TPA

MM11
KTTV
METROMEDIA TELEVISION
5746 SUNSET BOULEVARD / LOS ANGELES, CALIFORNIA [illegible] / (213) 462-7111

Mr. WIRTH. Thank you very much, Mr. Fritts.

Our next witness, Mr. Dudley Taft, is no stranger to the subcommittee. He has worked with us on a series of issues, and Taft Broadcasting was one of the first companies into this issue. Candy Lightner, founder of Mothers Against Drunk Driving wrote to us, "I wish that all broadcasters would display the commitment and concern that we found in Taft Broadcasting."

Mr. Taft, thank you again for joining us.

STATEMENT OF DUDLEY S. TAFT

Mr. TAFT. Thank you very much, Mr. Chairman.

I am here today representing the Television Operators Caucus, an organization of 11 television group operators reaching nearly 50 million television households in the United States.

We oppose legislation prohibiting or restricting broadcast beer and wine advertising. As explained in my written testimony, such legislation restricting commercial speech regarding lawful products which are not inherently lawful would be unconstitutional, counterproductive to many public interest goals, and would have serious implications for our system of television broadcasting and the advertising base that supports it.

Similarly, we believe the application of the fairness doctrine to mandate counteradvertisements would result in a withdrawal of beer and wine broadcast ads and would create a regulatory morass.

Last but not least, such restrictions would severely limit broadcasters' discretion and ability to respond to local communities' needs and interests.

I would like to take my time today to explain what TOC members have done voluntarily to raise the public consciousness regarding alcohol abuse.

During the last 6 months of 1984, TOC stations averaged 466 PSA's, 26 news stories, and 7 full-length locally produced programs on alcohol-related abuse. We also worked with community organizations sponsoring speakers at junior and senior high schools, bumper stickers, free cab rides, designated driver programs as well as printed educational materials.

Let me cite some examples. As early as 1981, Group W Station, KPIX in San Francisco, initiated a hard-hitting series of editorials about drunk-driving tragedies, which drew a response of more than 2,500 letters in support of a new, tough drunk-driving law.

When the Governor of California signed the bill into law, he recognized that station's contribution to its passage. Metro-Media's KTTV in Los Angeles in April 1981 produced a month-long series of prime time specials entitled "America on the Binge" and distributed pamphlets listing facts on alcoholism with names and numbers of local organizations to call for help.

KTTV had a similar effort this spring. Post Newsweek station WDIV in Detroit in 1983 waged an all-out effort to address alcohol abuse issues through regularly scheduled programs, special news series, editorials, PSA's and three locally produced specials.

Our company, in association with Mothers Against Drunk Driving, began planning a coordinated assault on the problem of drunk driving in December 1983. Beginning on Memorial Day 1984, our 7 television stations initiated a series of editorials, news stories, PSA's on alcohol abuse and drunk driving, including 11 company-produced PSA's which were distributed to other stations around the country.

The combined total of PSA's on the subject for the 7 stations during the 6-month period was 7,120. Each station also aired a 60-minute company-produced prime-time special, the "Taft Drunk Driving Test," the weekend of December 19, distributing study guides through schools and other media.

Now let's talk about the results. The National Highway Traffic Safety Administration credits public awareness campaigns as one of the four major contributors to the recent national reduction in alcohol-related traffic fatalities. At Taft we have tried to research the impact of our own efforts.

In the Miami area, where Taft station WCIX has worked closely with traffic safety officials and community groups, there was a dramatic reduction in drunk-driving fatalities and accidents during the last 6 months of 1984. Dade-Miami Criminal Justice Council informed WCIX, and I quote, "Your station's public service campaign made a significant contribution to heightened awareness of the serious threat to public health."

The commissioner of public welfare in Birmingham, AL, stated that the efforts of WBRC to increase the focus and public awareness of this problem has contributed to the lowering of alcohol-related fatality and accident rate in Jefferson County, AL.

Other Taft stations have had similar results. Here in Washington, DC, where we have channel 20, alcohol-related deaths were down 22 percent in a recent 9-month period, and in Kansas City such deaths were down 14 percent in 1984 compared to 1983, and down 45 and 31 percent in the last 2 months of 1984.

Similar efforts and results have taken place in other TOC communities around the country.

Now, we don't claim that we are the whole solution. We do believe that our public service efforts are having an impact and we intend to continue them, but if a ban or counteradvertisements are mandated for beer and wine, setting a precedent for other lawful products, our discretion, our resources and time available to air and produce educational programs and spots concerning alcohol abuse and on behalf of other worthy causes will be curtailed.

Broadcasters want to do their part, but we do not believe a ban or mandatory counteradvertisements to be justified or effective. What is needed is this kind of locally coordinated and directed effort by all concerned to enact and enforce laws and provide rehabilitatative services that directly address the problem of alcohol abuse and to help the public make educated, informed choices in a free marketplace of products and ideas.

Thank you, Mr. Chairman.

[Testimony resumes on p. 297.]

[The prepared statement of Mr. Taft and subsequent letter follow:]

TESTIMONY OF

DUDLEY S. TAFT
PRESIDENT, TAFT BROADCASTING COMPANY

ON BEHALF OF

TELEVISION OPERATORS CAUCUS, INC.

I. INTRODUCTION

My name is Dudley Taft, President of Taft Broadcasting Company. I am here today representing the Television Operators Caucus, Inc., an organization of eleven television group operators, with a combined total of sixty-seven television stations in forty-five markets, reaching nearly fifty million television households in the United States (list attached).

The TOC was formed to provide an organization for the definition, discussion and presentation of positions on issues of particular concern to television station owners at a time when the proliferation of program services and delivery systems has brought about not only a diversity of voices but a diversity of interests in a competitive environment. But on the issue before this Subcommittee today, the Television Operators Caucus is united with all electronic media in opposition to legislation prohibiting or restricting broadcast beer and wine advertising.

II. EXISTING PUBLIC EDUCATIONAL EFFORTS

The members of TOC agree that alcohol abuse is a serious social problem facing Americans today. We have played an active role in increasing the public's understanding and awareness of abusive consumption of alcohol. As broadcasters, we know our local communities and have taken leadership positions in addressing their concerns. The stations owned by members of the Television Operators Caucus have waged aggressive and effective public education campaigns against alcohol abuse, not just in the past year, but for many years. For example, Group W station KPIX-TV (5) in San Francisco initiated a hard-hitting series of editorials about drunk driving tragedies in 1981 which drew a response of more than 2,500 letters which were forwarded to state officials in support of a new, tough drunk driving law. When the Governor of California signed the bill into law in late 1981, he recognized the station's contribution to its passage.

Metromedia's KTTV (11) in Los Angeles, in April, 1981, produced a month-long series of prime time specials, entitled "America on the Binge", and distributed pamphlets listing facts on alcoholism with names and numbers of organizations to call for help. KTTV had a similar effort this spring. Post-Newsweek station WDIV-TV (4) in Detroit, in 1983 waged an all-out effort to engage all the station's resources in a concentrated time period to address alcohol abuse issues through regularly scheduled programs, a special news series, editorials, PSAs and three locally produced specials.

Our seven Taft television stations, in association with Mothers Against Drunk Driving (M.A.D.D.), sponsored a series of projects aimed at making the public better aware of the devastating effect of driving while drinking. Beginning on Memorial Day, 1984, these efforts included editorials, news stories, and public service announcements, including eleven company-produced PSAs which ran an average of 80 times per month on each Taft station. The combined total of all PSAs for the seven stations during the six months was seven thousand, one hundred and twenty. The Taft-produced PSAs, which were distributed by the Taft television group, ABC and the NAB for use on other stations throughout the country, won a New York International Film Festival Award and were commended by Dr. Russ Fine, Chairman of Alabama Governor's Task Force on Drunk Driving, as "among the most moving and clever and creative I have seen...absolutely sensational!"

Taft's educational efforts also included a 60-minute company-produced prime time special, "The Taft Drunk Driving Test," which aired on all seven stations the weekend of December 29 and was accompanied by printed study guides distributed to Junior and Senior high schools and through local newspapers and TV GUIDE. The stations also participated in other efforts, such as providing free cab rides on major holidays, "Designated Driver" programs, the distribution of bumper stickers against drunk driving and supplying speakers on the issue.

I speak of Taft's efforts from experience. But all the Television Operators Caucus stations have been involved in creatively using the air waves to raise the public's consciousness concerning alcohol abuse. Based on comparable statistics available from two-thirds of the TOC stations for the last six months of 1984, each station, on the average, broadcast 466 public service announcements, twenty-six news stories and seven full length locally produced programs on alcohol related issues.

It also should be noted that voluntary efforts within the industry, notably by the Caucus for Producers, Writers and Directors, to deglamourize alcohol in programming have resulted in reducing the unnecessary and gratuitous portrayal of drinking in entertainment programs. Examples include DALLAS, which has trimmed 70% of drinking shown in the series, and the LUCIE ARNAZ SHOW, a new series from Taft Entertainment Television. In short, Mr. Chairman, we believe broadcasters are a vital part of the solution to the alcohol abuse problem in this country. And we believe we have helped make a difference.

According to a spokesperson for the National Highway Traffic Safety Administration, the major reasons for the recent national reduction in alcohol-related traffic fatalities are the 55 mph speed limit, child safety seat laws and the overall increase in the use of seat belts, greater law enforcement, and the public awareness campaigns carried on by governmental, private and media organizations.

At Taft we have tried to research the impact of Taft station efforts and have found that in all seven markets alcohol related deaths decreased from 1983 to 1984. According to David Orange, Commissioner of Public Welfare, Jefferson

County, Alabama, the efforts of Taft station WBRC-TV (6) "to increase the focus and public awareness of this problem [drunk driving] has contributed to the lowering of the alcohol related fatality and accident rate for Jefferson County." Over a twelve month period, such fatalities and accidents in Jefferson County declined 40%, compared to a state-wide figure of 25%.

In the Miami area, Taft station WCIX-TV (6) has worked closely with Dade and Broward County traffic safety officials, as well as with community groups such as M.A.D.D., the South Florida AAA and the South Florida Restaurant Association, to sponsor a very active public educational program. In Dade County, despite an above the national average increase in miles driven (5% as opposed to 3%), there was a 35% decrease in fatal DUI accidents, an 18.5% decrease in DUI injury accidents and a 37% decrease in total DUI accidents for the period July through December, 1984. These significant declines occurred at a time of increased DUI enforcement in Dade County, which would tend to increase both the number of reported instances of DUI and public awareness of the consequences of such behavior. Mr. Jeffrey M. Silbert, Executive Director of the office of the Dade-Miami Criminal Justice Council's safety program, informed WCIX, "Your station's public service campaigns... made a significant contribution to heighten awareness of this serious threat to public health."

In Broward County, where there was no additional law enforcement in effect during the second half of 1984, DUI deaths decreased by 27%. The Traffic Safety Director for Broward County has stated that "it most likely has been mass media promotions that have been effective in reducing the number of traffic fatalities in Broward County."

Testimonials such as the ones noted above have been received by TOC stations throughout the country. We do not claim nor seek credit for saving a single life nor for the statistics. We simply wish to state that we believe we are contributing to the solution of a national alcohol abuse problem. We are having an impact.

We intend to continue these educational efforts as we also continue to address other current issues and needs of our local communities. But if a ban or counter-advertisements are mandated with respect to beer and wine ads, setting a precedent for other legal products, our discretion to air such public affairs programs and PSAs will be limited by fiat, as would our ability to air public service messages that do not relate to product abuse, such as PSAs for the United Way, the Red Cross and other worthy causes.

III. NEITHER A BAN NOR MANDATORY COUNTER-ADS SHOULD BE IMPOSED

You have asked for comments on four major questions which I would summarize as follows: If beer and wine advertising increases alcohol consumption and abuse, should the Fairness Doctrine be applied to require counter-advertisements and how would that affect the economics of programming? Or are the voluntary educational efforts of broadcasters and others adequate in dealing with the problem?

Although many studies have been conducted, to date no causal relationship between beer and wine broadcast advertising and consumption has been established. Moreover, as recognized in the March 1985 staff recommendations of the Federal Trade Commission (Docket No. 209-46) on this subject,...."the problem in the case of alcohol is not consumption but abuse. The literature sheds virtually no light on the relationship between alcohol advertising and abuse."

Without direct evidence that advertising leads to abusive use of beer and wine, a ban or mandated counter-advertisements is unconstitutional because beer and wine are lawful products which have not been proven inherently harmful. Moreover, such restrictions would be counter-productive because they would provide an illusion of a solution to this serious social problem. Such restrictions would have serious implications for our system of television broadcasting and the advertising base that supports it. Finally, as discussed above, such restrictions would lessen broadcasters' discretion and ability to serve their local communities.

IV. EXISTING REGULATORY AUTHORITY

The Subcommittee has asked its witnesses to address the question of whether or not the Fairness Doctrine should be applied to product advertising. Before reaching that issue, I would like to briefly sketch the existing regulatory authority relating to broadcast beer and wine advertisements.

Within the limits of constitutional protection of freedom of speech and the press and the equal protection clause, and as authorized by Congress, the Bureau of Alcohol, Tobacco and Firearms (BATF) of the Treasury Department regulates alcohol advertising, including broadcast beer and wine advertisements, concurrently with the Federal Trade Commission. BATF revised rules are pending, while the FTC has found that, absent misleading or deceptive advertisements, the FTC will not issue generic regulations on the subject. The FCC has made the policy decision to concern itself with beer and wine broadcast advertisements "only in circumstances where a licensee has been convicted of violation of a [state] law prohibiting or limiting such advertisements."

Moreover, ultimately, the Constitutional protections of free speech and press must be honored. As to commercial advertisements, these protections only apply to speech which is not misleading and which concerns lawful activity. Second, the government's interest in regulating the speech must be "substantial." Clearly, a legitimate state interest exists in curbing abusive uses of beer and wine, such as driving while under the influence. A legitimate state interest also exists in curbing any uses of products which have been determined to be inherently harmful, such as cigarettes. Such an interest does not exist as to nonabusive consumption of wine and beer or other products, where the use is normal, but excessive use might be harmful, such as overuse of butter and other high cholesterol foods.

Third, regulation of commercial speech must "directly advance" the asserted governmental interest; it may not provide only ineffective or remote support for that interest. The Supreme Court has explicitly stated that it will closely scrutinize regulations that entirely suppress commercial speech in order to pursue behavioral policies, unless the behavior is inherently harmful. In 1976, the FCC denied a petition to restrict the television advertising of over-the-counter drugs. The FCC relied heavily on expanded First Amendment protection of commercial speech in deciding that such a restriction would not be proper because of the lack of evidence causally linking such advertising and drug abuse, and because of more effective means of addressing the problem of youthful drug abuse; i.e., education and rehabilitation programs and the enforcement of criminal laws.

Because the nonabusive use of beer and wine is not unlawful or inherently harmful, the prohibition of beer and wine broadcast advertising would be an example of an impermissible control of commercial speech in order to pursue a non-speech related policy. Furthermore, there is no evidence that regulation of product advertising will reduce the incidence of abusive behavior. Finally, because of the inelastic nature of the overall demand for these products, it is not established that a broadcast ban would affect total (as opposed to brand) consumption.

Fourth, regulation must not be broader than necessary to promote the government's "substantial" interest. A ban on broadcast advertising of beer and wine fails in several respects to satisfy this narrowness requirement. Rather than preventing all viewers and listeners from receiving important information relevant to consumption of lawful products, the government could promote its legitimate interests by imposing penalties on the abuse of these products. This principle requires that any restriction must be limited to abuse and may not extend to an entire class of users, most of whom do not abuse.

V. THE FAIRNESS DOCTRINE AND COUNTER-ADVERTISEMENTS

It has been proposed that mandatory counter-advertisements should be required under the Fairness Doctrine. The FCC has developed a set of rules to interpret this doctrine to require access to the broadcast media for opposing views in very limited situations: personal attacks, editorializing and political issues.

As to broadcast product advertisements generally, the FCC has declined to apply the Fairness Doctrine unless the advertisement constitutes advocacy of a position on a controversial issue of public importance. Thus, the mere showing of public announcements for the United Way did not give rise to Fairness Doctrine application, despite alleged controversy about handling of United Way contributions, because, as the U.S. Court of Appeals for the D.C. Circuit agreed, the ads did not take a position on that issue in a meaningful way.

The FCC, in its 1974 Fairness Report, retreated from imposing the Fairness Doctrine on commercial speech (as contrasted to news, entertainment or editorial content) and requiring counter-advertisements, stating that, "[w]e believe that standard product commercials, such as the old cigarette ads, make no meaningful contribution toward informing the public on any side of any issue" and that "it seems to us to make little practical sense to view advertisements such as these as presenting a meaningful discussion of a controversial issue of public importance."

In the same report, the FCC also concluded that the precedent of applying the Fairness Doctrine and counter-advertisement mandates to one product could not logically be limited and that the Commission could find no way to distinguish products that would require a grant of access of "opposing" views from those that would not.

Likewise, if the Fairness Doctrine were to be applied to mandate counter-advertisements for beer and wine, there simply is no way to draw a line between these and other lawful products, as the FCC in the mid-seventies discovered through well-intentioned, painful and sometimes ludicrous experience (such as a complaint that NBC had violated the Fairness Doctrine by showing dogs in entertainment programs and dog food commercials when there was evidence that dogs carry diseases harmful to man). Inevitably, any effort to draw a line will be challenged not only by those with pet peeves but by others who will build supportable legal challenges proving that such advertised products as over the counter drugs, soft drinks, products with food additives or automobiles also are abused and raise controversial issues of public importance under the Fairness Doctrine.

Moreover, requiring counter-advertisements for certain, but not all, consumer products would not withstand the constitutionally strict equal protection scrutiny that applies to restrictions of fundamental liberties, such as freedom of speech.

VI. THE ECONOMIC IMPACT OF MANDATORY COUNTER-ADVERTISEMENTS

The Television Operators Caucus believes that, ultimately, the economic impact of counter-advertisements will be the same as that of a ban. This is because beer and wine producers, faced with mandatory counter-advertisements, would withdraw their ads from the broadcast media.

The end result would be a significant loss of advertising revenue for both television and radio. In 1984 beer and wine advertisements produced advertising revenue of $688 million for television broadcasters and $189 million for radio broadcasters. Beer and wine advertisements constituted the seventh largest product group for television in 1984 and the second largest national advertising group for radio in 1983. But the total loss would be even greater, given the law of supply and demand, as such a significant reduction in advertising would drive the ad rates down.

No doubt over time some of these revenues could be replaced from other sources. But with respect to marginal television and radio stations, the immediate economic dislocation will be particularly harmful, especially for many new, independent and small stations, including minority owned properties. The same would be true for ad-supported cable services, including the Black Entertainment Television Network (BET), which Taft Broadcasting has helped support, and which relies on beer and wine advertising for over ten percent of its revenues.

Moreover, since beer commercials are especially concentrated in sports programs appealing primarily to men and since there is a limited pool of advertisers for sports programs (primarily automobiles and shaving products, in addition to beer and wine), broadcasters' ability to provide local sports coverage will decline. The decline in local sports coverage will in turn have an adverse revenue impact on the local teams --- whether professional or college --- which currently look to broadcast coverage for a significant portion of their funds.

The economic impact for broadcasters would be compounded as other products advertised on television and radio are challenged as potentially harmful and companies from still other industries make business judgments to shift advertising to other media. Inevitably, the cumulative effect would be a reduction in revenues available to sustain marginal stations, to support program acquisition and production, especially locally produced programs, and to finance public affairs programs and public service announcements.

In short, applying the Fairness Doctrine to commercial speech through counter-ads for lawful products that might be abused not only raises serious constitutional questions but may well undermine a number of public interest goals, including diversity of ownership and programming, minority ownership, and localism.

If, as we believe, counter-advertisements would be unconstitutional and counter-productive to many public interest goals, what is the rationale for singling out the electronic media, especially television, for such restrictions?

In meetings with Members of Congress, our members have heard concerns that beer and wine ads on television glamourize the products through the use of sports figures and that some ads are deceptive, unfair or encourage over-consumption. With respect to athletes, let me point out that the BATF already forbids the use of current athletes in these ads and is considering even tighter restrictions. That is where jurisdiction over "glamourous" ads for beer and wine belongs. Moreover, while beer and wine advertising provide major support for sports programming, Nielsen figures show that less than 3% of teens are in the sports audience.

As for misleading or deceptive ads, FTC Chairman Miller has stated that the FTC is "putting beer manufacturers on notice that the commission is likely to look in an increasingly unfavorable light" at ads which "are close to the margin" of legality. That is where jurisdiction over misleading or deceptive beer and wine ads belongs. In addition, each station and network carefully reviews ads submitted for beer and wine advertising before deciding to air them. Most apply strict standards reflecting community as well as product-related considerations, such as those set out in the beer and wine industry codes.

Yet SMART and its supporters would impose more stringent regulations over the electronic media. Why? As Messers. Jacobson and Hacker of SMART have stated, their first reason "is the sheer power of the broadcast media. Unlike print ads, radio and TV commercials reach out and grab viewers and listeners with sound and action."

If the "power" of television is the rationale for federal government restrictions, the logic for expanding the Fairness Doctrine to any lawful but abusable products would seem to apply to entertainment programming as well as advertising. Indeed, Mr. Chairman, in your letter inviting me to testify you noted that one concern of your Subcommittee was "the relationship between abuse of alcohol by adolescents and the portrayals of alcohol use in television advertising AND PROGRAMMING" (emphasis added). The logic of limiting expression based on power or impact would extend to virtually any program that dramatizes current social issues, such as child or spouse abuse, incest or abortion, and thereby, through "sound and action", presents a point of view raising controversial issues of public importance.

We agree that the broadcast media have power and impact. We do not agree that this power and impact justify lower First Amendment protections for broadcast speech. Indeed, as Judge David Bazelon stated, "There is no doubt about the unique impact of radio and television. In fact, quite the contrary. We should recall that the printed press was the ONLY medium of mass communication in the early days of the Republic -- and yet this did not deter our predecessors from passing the First Amendment to prohibit abridgment of its freedoms..."

It is because the medium of television has an impact that advertisers pay to promote their products on the screen. Yet, research indicates that per capita alcohol consumption has declined during the recent period when advertising expenses for beer and wine have reached an all time high. Part of the reason may be that broadcast advertising has aided the introduction of lower calorie and reduced alcohol content beverages in response to the increased health consciousness of the American people.

VII. CONCLUSION

We recognize the good intentions of those who are seeking a legislative solution to the serious societal problem of alcohol abuse through the imposition of restrictions on the electronic media. But, as the FTC concluded in its recent study "there is no basis for concluding that rules banning or otherwise limiting alcohol advertising would offer significant protection to the public." We believe mandated counter-advertisements against lawful products which are not proven harmful to be unconstitutional, counter-productive and unworkable, creating a regulatory morass which the FCC wisely has avoided since 1974. What is needed is a continued and intensified coordinated effort by all concerned to enact and enforce laws and provide rehabilitative services that deal directly with the problem of alcohol abuse and to help the public make educated and informed choices in a free marketplace of products and ideas.

TELEVISION OPERATORS CAUCUS
MEMBERS AND STATIONS

*BELO BROADCASTING CORP.
Ward L. Huey, President

WFAA-TV (8), Dallas, Texas (ABC)
WVEC-TV (13), Hampton-Norfolk, VA (ABC)
KXTV-TV (10), Sacramento, Ca. (CBS)
KOTV-TV (6), Tulsa, Okla. (CBS)
KHOU-TV (11), Houston, Tex. (CBS)

*CAPITAL CITIES COMMUNICATIONS, INC.
Joseph P. Dougherty, President, Broadcast Division

WTVD-TV (11), Durham, N.C. (CBS)
KTRK-TV (13), Houston, Tex. (ABC)
WKBW-TV (7), Buffalo, N.Y. (ABC)
WPVI-TV (6), Philadelphia, Pa. (ABC)
WTNH-TV (8), New Haven, Conn. (ABC)
KFSN-TV (30), Fresno, Calif. (CBS)
WFTS-TV (28), Tampa, Fla. (Ind.)

*COX COMMUNICATIONS, INC.
William A. Schwartz, President

WSB-TV (2), Atlanta, Ga. (ABC)
WHIO-TV (7), Dayton, Ohio (CBS)
WSOC-TV (9), Charlotte, N.C. (ABC)
KTVU-TV (2), Oakland-S.F., Ca. (Ind.)
WPXI-TV (11), Pittsburgh, Pa. (NBC)
KDM-TV (30), St. Louis, Mo. (Ind.)
WKBD-TV (50), Detroit, Mich. (Ind.)

*GANNETT BROADCASTING GROUP
Jeffrey Davidson, President, Broadcasting Group

KPNX-TV (12), Phoenix-Mesa, Ariz. (NBC)
KOCO-TV (5), Oklahoma City, Okla. (ABC)
KUSA-TV (9), Denver, Colo. (ABC)
WTCN-TV (11), Minneapolis, Minn. (NBC)
WLVI-TV (56), Boston, Mass. (Ind.)
WXIA-TV (11), Atlanta, Ga. (NBC)

*GROUP W - WESTINGHOUSE BROADCASTING & CABLE, INC.
William F. Baker, Chairman of Television

WBZ-TV (4), Boston, Mass. (NBC)
KYW-TV (3), Philadelphia, Pa. (NBC)
KPIX-TV (5), San Francisco, Ca. (CBS)
KDKA-TV (2), Pittsburgh, Pa. (CBS)
WJZ-TV (13), Baltimore, Md. (ABC)

*METROMEDIA, INC.
Robert M. Bennett, President, Television

WNEW-TV (7), New York, N.Y. (Ind.)
KTTV-TV (11), Los Angeles, Ca. (Ind.)
WTTG-TV (5), Washington, D.C. (Ind.)
WCVB-TV (5), Boston, Mass. (ABC)
WFLD-TV (32), Chicago, Ill. (Ind.)
KRLD-TV (33), Dallas-Ft. Worth, Tex. (Ind.)
KRIV-TV (26), Houston, Tex. (Ind.)

*MULTIMEDIA BROADCASTING CO.
James T. Lynagh, President

KSDK-TV (5), St. Louis, Mo. (NBC)
WMAZ-TV (13), Macon, Ga. (CBS)
WBIR-TV (10), Knoxville, Tenn. (CBS)
WLWT-TV (5), Cincinnati, Ohio (NBC)
WZTV-TV (17), Nashville, Tenn. (Ind.)

*OUTLET COMMUNICATIONS, INC.
David Henderson, President, Broadcast Division

WJAR-TV (7), Providence, R.I. (NBC)
WCPX-TV (6), Orlando, Fla. (CBS)
KSAT-TV (12), San Antonio, Tex. (ABC)
KOVR-TV (13), Stockton-Sacramento, Calif. (ABC)
WCMH-TV (4), Columbus, Ohio (NBC)
WATL-TV (36), Atlanta, Ga. (Ind.)
WPDS-TV (59), Indianapolis, Ind. (Ind.)

*POST-NEWSWEEK STATIONS, INC.
Joel Chaseman, President

WDIV-TV (4), Detroit, Mich. (NBC)
WJXT-TV (4), Jacksonville, Fla. (CBS)
WPLG-TV (10), Miami, Fla. (ABC)
WFSB-TV (3), Hartford, Conn. (CBS)

*STORER COMMUNICATIONS, INC.
Terry H. Lee, President

WJBK-TV (2), Detroit, Mich. (CBS)
WAGA-TV (5), Atlanta, Ga. (CBS)
WITI-TV (6), Milwaukee, Wisc. (CBS)
WTVG-TV (13), Toledo, Ohio (NBC)
WJKW-TV (8), Cleveland, Ohio (CBS)
WSBK-TV (38), Boston, Mass. (Ind.)
KCST-TV (39), San Diego, Calif. (NBC)

*TAFT BROADCASTING CO.
Dudley S. Taft, President

WBRC-TV (6), Birmingham, Ala. (ABC)
WKRC-TV (12), Cincinnati, Ohio (ABC)
WTVN-TV (6), Columbus, Ohio (ABC)
WDAF-TV (4), Kansas City, Mo. (NBC)
WTAF-TV (29), Philadelphia, Pa. (Ind.)
WDCA-TV (20), Washington, D.C. (Ind.)
WCIX-TV (6), Miami, Fla. (Ind.)

Mothers Against Drunk Driving

669 Airport Freeway, Suite 310 • Hurst, Texas 76053 • (817) 268-MADD
Central Office

CANDY LIGHTNER
Founder

May 14, 1985

Honorable Tim Wirth
House of Representatives
Rayburn Building, Room 2262
Washington, D.C. 20515

Dear Congressman Wirth:

It has been brought to my attention that the president of Taft Broadcasting is testifying before your Subcommittee on Alcohol. I wanted to take the opportunity to briefly outline the outstanding public information and community education program conducted by Taft in conjunction with MADD in the past year.

Seven Taft television stations joined with Mothers Against Drunk Driving to focus public attention on America's impaired driving crisis. Working under the theme "Station (call letters) is MADD about Drunk Driving", Taft produced and aired public service announcements for MADD for local and national distribution. In addition, each station featured weekly or bi-weekly newsfeatures focusing on impaired driving issues, and produced a one-hour prime time special called "The Taft Drunk Driving Test." Each Taft station also participated in "cab call" programs, and also produced and distributed large quantities of bumper stickers and BAC cards.

Congressman Wirth, I would like to commend Taft for its wonderful contribution to both the MADD movement and our country. I wish that all broadcasters would display the commitment and concern that we found in Taft.

I appreciate the opportunity to share this information with you. Thank you for your efforts to reduce incidents of impaired driving through your work in Congress.

Sincerely,

CANDY LIGHTNER
Founder

Mr. **Wirth**. Thank you very much, Mr. Taft.

Prof. John Banzhaf of the George Washington University Law School in Washington, is, I believe, the foremost legal authority in the country on the question of the applicability of the fairness doctrine to product ads.

Professor Banzhaf filed the original petition at the FCC calling for counterads for cigarette commercials. We know, Professor, that you have a great number of commitments today, and we appreciate your being able to come down and join us.

STATEMENT OF JOHN R. BANZHAF III

Mr. **Banzhaf**. Thank you, Mr. Chairman.

I am probably the only witness here this morning who is neither for nor against any particular piece of legislation; rather, I was asked by your staff to see if there were any parallels between my experience with cigarette advertising, the fairness doctrine, and the ban and the issues here today and to see if I could draw some parallels.

I think there are quite a number of parallels between these two products, tobacco and alcohol, and indeed, parallels which distinguish them from most of the other products to which arguments might be made.

Both of these products contain very powerful drugs. Many of the users apparently use these products because of their desire or craving for the effects of the drugs. Both products are strongly addictive, at least to a certain number of people. Both are unbelievably deadly. The most recent study is that cigarettes kill about 500,000 Americans a year; alcohol about 100,000 Americans a year. The combined total is 20 times that of all of the other drugs in America, the ones we spend so much money trying to regulate.

By the way, I might add that I wish the broadcasters would spend as much time on the issue of tobacco as they apparently are doing on alcohol, since it does kill about five times as many Americans as alcohol.

The costs to society of both of these products are enormous. They are, so far as I know, the only two products which, both by law and custom, are restricted to adult consumption. And finally, I think there are amazing parallels between the ads for cigarettes in the sixties and the ads for beer and wine in the eighties.

Based upon those similarities, I have really three suggestions that I would make to the committee. The first is this. Both the cigarette manufacturers and the alcohol manufacturers claim that they do not attempt in their ads to encourage consumption, and particularly that they do not intend to encourage consumption among youth. On the other hand, the Federal Trade Commission, at our instigation, did a major study of the cigarette industry using their extensive subpoena power.

What they found were document after document where the tobacco industry at least was attempting, had carefully planned and orchestrated advertising efforts to try to get people to smoke, and particularly to get young people to smoke. Some of these are laid out on page 4 of my written testimony.

The FTC summarized it this way:

Cigarette ads usually say that smoking is associated with youthful vigor, good looks, good health, personal, social and professional acceptance and success, and compatible with a wide range of athletic and youthful activities.

I think much the same could be said with regard to alcohol ads.

We also introduce evidence here, and it is in our testimony, of extensive campaigns aimed at young kids, some as young—well, they were saying that they should look forward to starting to wear a bra or beginning to shave. That will give you some idea of how young they were going after them.

What I would suggest, therefore, is that one of the best ways to get to the bottom of this issue would be for this committee or the FTC or as part of Mr. Nielson's study that subpoenas be issued along the lines that the FTC used looking for documents describing ad campaigns, themes, target audiences and so on.

If those documents are similar to those the tobacco industry had, you will know one thing, and if they are very different, you will know the other; but it seems to me that is probably the best and most logical way to get to the bottom of this. The advertisers have probably done far more detailed studies than this committee could possibly do, and I think you should not proceed without having that documentation.

The second suggestion is that both approaches, the ad ban and the reply time doctrine, would probably be effective based on the experience with cigarette advertising. Probably the reply time doctrine would be more effective and would have a much more immediate impact, and I refer you to the chart on page 5 of my testimony, which shows the per capita consumption of cigarettes as it responded to various events, particularly the antismoking messages, which began roughly in late 1967, and the ad ban, which began in 1971.

Finally, with regard to the two approaches, I think that both are constitutional, both could be justified rather easily, either under three theories that I know of. One is that the ads tend to be deceptive because they do not reveal material facts. Two, under a theory that we submitted, is amicus curiae, which says, very roughly, that if Congress has the power to ban a product because of its danger, it seemingly would have the power to adopt lesser restrictions, including reply time, including ad bans, including mandatory warnings.

The third is the analysis laid out by the Duggan court in its consideration of a similar ad ban down south.

In conclusion, I would simply note that Mr. Seiberling's proposal for equal time goes substantially beyond what the fairness doctrine at the FCC ever required, which was only reasonable time. In the case of cigarette commercials, we believe that was about 3 to 1 to 6 to 1, and therefore that would leave some leeway with this committee, if it were concerned that there be too much of an adverse economic impact, to simply adjust that ratio. I think even a ratio of 5 to 1, if the cigarette experience provides any guidelines for us, we would find that there would be a significant reduction.

One of the other advantages of the reply time doctrine is it seems to me it does not depend on the idea that the alcohol ads necessarily do affect consumption but is based roughly on the idea, very consistent with our idea of free speech, that both sides should be heard. If both sides are adequately heard and people continue to drink or, indeed, even drink more, that value would have been served.

I would be happy to answer any questions at the appropriate time, Mr. Chairman.

[Testimony resumes on p. 372.]

[Mr. Banzhaf's prepared statement with attachments and supplemental letter follow:]

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TESTIMONY OF JOHN F. BANZHAF III ON

"BEER AND WINE ADVERTISING: THE IMPACT OF THE ELECTRONIC MEDIA"

HOUSE SUBCOM. ON TELECOMMUNICATIONS, CONSUMER PROTECTION & FINANCE

TUESDAY, MAY 21, 1985, 2123 RAYBURN HOUSE OFFICE BUILDING

SUMMARY OF RECOMMENDATIONS

I. BOTH CIGARETTE AND ALCOHOL BEVERAGE MANUFACTURERS DENY THAT THEIR ADS ARE DESIGNED TO INCREASE CONSUMPTION OR TO APPEAL TO CHILDREN; BUT SINCE THE TOBACCO INDUSTRY'S CLAIMS HAVE BEEN UNDERMINED IF NOT DESTROYED BY FORCED DISCLOSURE OF INCRIMINATING DOCUMENTS, THE LATTER'S CLAIMS SHOULD NOT BE CREDITED UNLESS A SIMILAR INVESTIGATION IS MADE.

II. BOTH APPROACHES -- BANNING THE ADS OR PROVIDING REPLY TIME -- ARE LIKELY TO REDUCE CONSUMPTION, BUT THE LATTER WILL PROBABLY BE QUICKER AND MORE EFFECTIVE.

III. BOTH APPROACHES -- BANNING THE ADS OR PROVIDING REPLY TIME -- ARE PROBABLY CONSTITUTIONAL, BUT THE LATTER RAISES FEWER FREE SPEECH PROBLEMS AND OBJECTIONS

My name is John Banzhaf. I am a Professor of Law at the National Law Center of the George Washington University. I am also the founder and Executive Director of the national antismoking organization Action on Smoking and Health, sometimes called ASH. However, I wish to make it clear that I am testifying here as an individual, and that my statements do not necessarily represent the views of my law school, my university, or my organization.

I also wish to make it clear that I did not come to testify for or against any particular legislation, nor am I allied with any particular group or interest involved in this controversy. Rather, I am here because I played a major role in causing the fairness doctrine to be applied to cigarette advertising, in banning cigarette commercials on radio and television, and in defending the constitutionality of that ban in court. [See ATTACHMENTS IA and IB] I was therefore asked by the Committee's staff to testify because there are a number of important parallels between the two products, and because the experience with one may be useful in dealing with the other.

Indeed, the parallels between the two products are striking, and serve to distinguish these two products from virtually all others.

1. Both products contain powerful drugs -- nicotine or alcohol -- which have a significant and immediate effect on the bodily functions of those who ingest them.

2. Both products are used in large part because the users desire or crave the effects these drugs cause.

3. Both products are addictive to a substantial number of users, and the addiction can be so strong in each case that users are unable to quit, even where it means almost certain death.

4. Both products are unbelievably deadly, with cigarettes killing some 500,000 Americans each year, and alcoholic beverages killing another 100,000. Together they are responsible for almost one-third of all American deaths from all causes; and approximately twenty times (2000%) the number of deaths from all other drugs. [See ATTACHMENT II]

5. The costs to society of each of these products is enormous, and almost certainly exceed the taxes paid.

6. For these and other reasons, tobacco and alcoholic beverages are the only two major products which both by law and custom are restricted to adult consumption.

7. Finally, to an extent which is virtually unique compared to advertising for other products, many beer and wine commercials of the 80's, like cigarette commercials of the 60's, seek to equate the use of the product with socializing, sophistication, popularity with members of the opposite sex, and with use by the young adults children seek to emulate, and to provide a justification (excuse, rationale) for their use.

In 1967, in response to a complaint which I had filed, the Federal Communications Commission held that cigarette commercials presented one side of a "controversial issue of public importance," and thus fell within the requirements of the fairness doctrine. All broadcasters presenting such ads were required by the FCC to provide presenting such ads were required by the FCC to provide a reasonable amount of time -- not equal time -- to the opposing view, and it was informally stated that a ratio of one so-called "antismoking commercial" for every three cigarette commercials would be reasonable. After a reaffirmation of its original decision by the FCC and the courts, Banzhaf v. F.C.C., 405 F.2d 1082 (D.C. Cir. 1968), and after I set up a monitoring system and began filing complaints for enforcement, antismoking messages began appearing in great numbers and cigarette per capita consumption began falling.

Faced with this situation, representatives of the tobacco industry appeared before the Senate Commerce Committee and agreed to take cigarette commercials off the air. To avoid conflict with the antitrust laws, they asked for either an exemption from these laws, or that Congress itself enact a ban which they would, of course, obey. Congress chose the latter approach, and on January 1, 1971 cigarette commercials ceased. The ban was subsequently upheld in court, in a case in which I participated as amicus curiae, Capital Broadcasting Co. v. Mitchell, 330 F. Supp. 582 (3-judge, D.D.C. 1971), aff'd, 405 U.S. 1000 (1972).

Based upon this experience, and my subsequent involvement with cigarettes and cigarette advertising, I would like to make the following observations and suggestions:

I. BOTH CIGARETTE AND ALCOHOL BEVERAGE MANUFACTURERS DENY THAT THEIR ADS ARE DESIGNED TO INCREASE CONSUMPTION OR TO APPEAL TO CHILDREN; BUT SINCE THE TOBACCO INDUSTRY'S CLAIMS HAVE BEEN UNDERMINED IF NOT DESTROYED BY FORCED DISCLOSURE OF INCRIMINATING DOCUMENTS, THE LATTER'S CLAIMS SHOULD NOT BE CREDITED UNLESS A SIMILAR INVESTIGATION IS MADE

A. Cigarette manufacturers have long maintained that their ads are designed only to persuade existing smokers to switch to the advertisers' brand, and that they do not encourage smoking, particularly among children. Yet, when the Federal Trade Commission conducted an investigation of the tobacco industry in response to our complaint, their subpoenas uncovered a variety of documents which clearly indicated to the staff that many of the ads were deliberately designed to persuade people to begin smoking. [See ATTACHMENT III] This was frequently done by assuaging people's worries about the risks of smoking, by providing a rationale or a justification for smoking (e.g., as a reward), and by associating very positive images with the custom of smoking. To do this, the FTC staff reported, manufacturers deliberately tend to rely upon "dominent themes of cigarette advertising [which] are that smoking is associated with youthful vigor, good health, good looks, and personal, social and professional acceptance and success, and that it is compatible with a wide range of athletic and healthful activities." Couldn't the same be said about much of the alcohol advertising now on television?

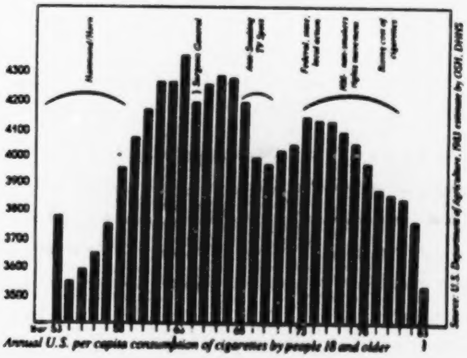
B. Similarly, the FTC found substantial evidence of attempts to persuade what one advertiser called "starters" -- teenagers and even pre-teens -- to begin smoking. They reportedly did this by "present[ing] the cigarette as one of a few initiations into the adult world; present[ing] the cigarette as part of the illicit pleasure category of products and activities; [and] . . . to the best of your ability . . . relate[ing] the cigarette to 'pot,' wine, beer, sex, etc." The age of some of the potential "starters" may be gleaned from the suggestion that smoking be equated with such other future rites of passage as beginning to shave and wearing a bra. Needless to say, many of these same themes seem to be found in beer and wine ads as well.

C. Fortunately, Congress need not be forced to choose between accepting the self-serving assertions of the alcohol industry that they would never do what the tobacco industry has rather clearly done, or finding them guilty by association or because of the similarity of the two products and their ad themes. Rather, a simple and straightforward solution would be for this Committee (or the FTC) to issue subpoenas, modeled after those used by the FTC to investigate the tobacco industry, to require the production of documents describing ad campaigns, themes, target audiences, etc. If the alcohol manufacturers are telling the truth, they would have little to hide and could quickly, easily, and voluntarily supply the requested documents and by so doing put this issue to rest. On the other hand, if they refuse to provide these documents, even if guaranteed protection for legitimate trade secrets, Congress can simply draw the logical adverse inference that they are at least trying to persuade people (including young people) to imbibe, and make the further more-than-warranted assumption that as experts they probably are successful, at least in part.

II. BOTH APPROACHES -- BANNING THE ADS OR PROVIDING REPLY TIME -- ARE LIKELY TO REDUCE CONSUMPTION, BUT THE LATTER WILL PROBABLY BE QUICKER AND MORE EFFECTIVE

A. During the years when substantial numbers of antismoking messages were presented in prime time -- 1968, 1969, and 1970, -- per capita cigarette consumption plummeted, and no other event or reason would explain it. Because the FCC did not reaffirm its June cigarette advertising decision until September of 1967, because many stations did not seriously comply until I set up a monitoring and complaint system in 1968, and because the FCC did not require until 1968 that the antismoking messages appear in prime time, the consumption dip in 1967 is understandably much smaller.

U.S. per capita cigarette consumption



Source: U.S. Department of Agriculture, 1983 estimates by OSH, DHHS

Annual U.S. per capita consumption of cigarettes by people 18 and older

B. Cigarette commercials were banned effective January 2, 1971, and immediately thereafter the number of antismoking messages on radio and television dropped dramatically. Apparently as a result, per capita cigarette consumption rose during 1971, 1972, and 1973, and did not begin to taper off until 1974. There seem to be several reasons to explain both of these phenomenon.

C. First, the people making the decision whether or not to take up smoking during those years -- most of them children -- had grown up seeing and being influenced by a barrage of cigarette commercials. From their earliest days they saw smoking portrayed as making one sophisticated, sociable, sexy, and adult. While the antismoking messages were actively being aired (1967 - 70), they presented such an effective counterforce that consumption fell despite the effects of the ads.

D. But once the counterads were largely removed, the residual images of the old cigarette commercials -- present in the children's minds even though the ads were no longer being broadcast -- were powerful enough to cause an increase in consumption, despite the by-then-well-known health dangers. In short, the effects of an ad ban (cigarettes or alcohol) would not be expected to be fully felt until kids making the crucial decision of whether or not to indulge were born late enough that they did not grow up watching the commercials.

E. There has been a dramatic drop in per capita cigarette consumption during the latter part of the 1970's, and continuing into the 1980's, but it is unlikely that it was caused solely or even principally by the ban on cigarette commercials. Instead, there are two other major explanations.

F. The so-called nonsmokers' rights movement began in earnest in 1973 when the CAB first required no-smoking sections on commercial aircraft, Arizona passed the first modern nonsmokers' rights bills, and many other legislatures began holding hearings on the issue. The tobacco industry, in a secret survey and report they made in 1978, clearly indicates that the nonsmokers' rights movement is today the principle factor in persuading people to quit or not to smoke [See ATTACHMENT IV]. Thus, the nonsmokers' rights movement -- by constantly reminding people that the great majority of adults do not smoke, and that they object to people who do -- is probably responsible for most of the drop in consumption; and in the absence of that movement, the ban of cigarette commercials may have had little effect. Also, the 8¢ increase in federal cigarette taxes was also a major factor, particularly in the very big drop for 1983.

III. BOTH APPROACHES -- BANNING THE ADS OR PROVIDING REPLY TIME — ARE PROBABLY CONSTITUTIONAL, BUT THE LATTER RAISES FEWER FREE SPEECH PROBLEMS AND OBJECTIONS

A. Despite the fact that the U.S. Supreme Court in a number of cases has recognized that commercial speech enjoys some but not all of the protections of noncommercial speech, there are several legal theories under which a ban on commercials for alcoholic beverages is very likely to be sustained. The first is that the Court has always recognized that speech which is misleading or deceptive can be banned. The Federal Trade Commission, along with many experts, have long maintained that cigarette commercials were deceptive because they failed to state material facts about the extent of the dangers of using the product. A similar rationale can be applied to ads for alcoholic beverages. In both situations the court can surely assess the deceptive nature of the ad, especially when presented to children, since, regardless of at whom the ads are aimed, they certainly are seen by and affect millions of young people.

B. A second theory upon which alcohol ads could be banned is one I presented to the court as *amicus curiae* in *Dunagin v. City of Oxford, Miss.*, 718 F.2d 738 (5th Cir. 1983), which commented favorably upon it [at p. 742]. It says in effect that if the government may constitutionally ban a product entirely because of the danger it presents to the public, it can and should be able to adopt less restrictive measures affecting the ads, such as banning them entirely, requiring various warnings, or requiring reply time. If such measures are constitutionally proscribed, it would force the government to wait too long in terms of mounting evidence before banning a product, and ironically force it to ban the product prematurely even where lesser restrictions related to the advertising (e.g., required disclosures, warnings, etc.) may be all that is necessary. [See ATTACHMENT V]

C. A third theory is that used by the *Dunagin* court to justify a total ban on alcoholic beverage advertising. These arguments are even stronger here, because the proposed law banning alcohol beverage commercials could be aimed at broadcasters (who are regulatees, and have no First Amendment rights to present a certain kind of advertising), rather than at the beverage producers who would still remain free to advertise their products in a wide variety of other mediums.

D. Nevertheless, a reply-time approach avoids many of the philosophical and legal problems posed by a commercial ban, and also eliminates the need to prove causation. The Supreme Court has upheld the FCC's imposition of fairness doctrine requirements with regard to the broadcast media, and such a congressionally-imposed solution to the alcoholic beverage advertising problem would carry an even greater presumption of constitutionality. It also does not prohibit any speech, but rather -- consistent with the classic First Amendment view that the best answer to objectionable speech is countervailing speech -- merely assures that both sides have a reasonable chance to be heard; something which surely is not true today.

E. Since the purpose of the reply messages would be simply to assure that potential drinkers were aware of the arguments against consumption in some or all circumstances, rather than to reduce consumption, it is unnecessary for the proponents to establish that the countermessages would in fact produce a drop in consumption, even though that may be the desired result. Under this rationale -- that licensees awarded a governmental monopoly can be required to see that on controversial issues of public importance both sides have a reasonable chance to be heard -- it is largely irrelevant whether the manufacturers have a specific intent to persuade people to drink alcoholic beverages, or to aim their messages at teenagers.

F. Another advantage of the reply-time approach would be that manufacturers of new products such as low-alcohol beer and wine coolers would remain free to effectively promote them as substitutes for ordinary beer and wine which have a higher alcohol content.

SUMMARY

1. Cigarettes and alcoholic beverages are alike in many ways: ways which distinguish them from virtually all other products. These include the drugs they contain and which are a major reason for their use; the huge numbers of deaths, disabilities, and societal expense which they cause; laws restricting their purchase by kids; the use of highly suggestive and seductive imagery in their ads; and large numbers of organizations which are actively concerned about their use. On the other hand, alcohol causes far fewer deaths, is apparently addictive to a much smaller percentage of users, does not appear to be dangerous when used by most people in moderation, and has risks which have long been known. Thus, while it is a judgment for Congress whether the dangers posed by alcohol beverages and their ads are comparable to those of cigarettes, experience with cigarette advertising is the closest possible parallel to the instant situation, and provides valuable lessons.

2. The first lesson is that Congress should not accept the unsubstantiated and self-serving assurances of the alcohol industry that their ads do not help to create a climate in which people are persuaded to imbibe; particularly when their ads, like their products, are in many ways so similar to those of the tobacco industry. Instead, subpoenas seeking the production of advertising documents should be required as they were with regard to the tobacco industry, and any failure of beer or wine makers to cooperate fully and voluntarily should create the strongest possible adverse inference.

3. Experience with cigarette ads clearly indicates that a reply-time approach will produce more of an effect, and produce it more quickly, than an approach which prohibits the electronic advertising of alcoholic beverages. Although both approaches would appear to be constitutional, the reply-time approach raises fewer legal and philosophical objections, and is consistent with the idea that the best approach to objectionable speech is countervailing speech. The reply-time approach also does not assume -- nor require its supporters to demonstrate -- that alcohol beverage advertising encourages consumption, nor that a ban on such ads would necessarily discourage consumption.

Data and Perspectives

Addiction Mortality in the United States, 1980: Tobacco, Alcohol, and Other Substances

R. T. Ravenholt

At the beginning of the twentieth century, infectious diseases were the foremost cause of death in the world (1,2). Tuberculosis, smallpox, malaria, cholera, typhoid, diphtheria, tetanus, streptococcal, staphylococcal, influenza, and many other infections then caused more than half of all deaths (3), as they still do in a few less developed countries (4). But with the great progress made during this century in the conquest of infectious diseases, such diseases now cause fewer than 5 percent of all deaths in the United States (5) and other highly developed countries (4).

Meanwhile, reflecting innumerable developmental changes, increased affluence, and great alterations in life styles (6), the addictive use of many psychoactive substances—tobacco, alcohol, heroin, cocaine, marihuana, stimulants, hypnotics, and hallucinogens—has made drug abuse the leading cause of death in the United States, where more than half a million deaths in 1980 were attributable to such practices. This striking fact, however, has been obscured in the nation's vital records and statistics by the general practice of certifying and coding addictive disease deaths according to their numerous anatomic and disease manifestations, while *failing* to note the addictive practices underlying such precocious deaths (7).

Insidiously, the abuse of hazardous substances—this "enemy within"—accelerates the occurrence of a broad spectrum of diseases ordinarily associated with advanced age: cancer, arteriosclerotic cardiovascular diseases, and degenerative diseases of every kind. Because the pathologic effects are diffuse in time and place, measurement of the nature and magnitude of morbidity and mortality from the abuse of addictive substances has lagged, presenting a unique challenge to contemporary epidemiology, biostatistics, and demography.

POPULATION AND DEVELOPMENT REVIEW 10, NO. 4 (DECEMBER 1984) 697

ATTACHMENT II

Method of study

With the help of National Library of Medicine computers, the literature on tobacco, alcohol, heroin, cocaine, and other drugs was surveyed, and titles, abstracts, and copies of recent relevant articles were obtained. A printout of US mortality by every cause in 1980 was obtained from the National Center for Health Statistics, to facilitate identification of drug-related deaths by discrete categories. Colleagues in government agencies supplied pertinent publications and participated in work group discussions of methods and findings.

To make an overall estimate of addiction mortality, one must necessarily make estimates for each substance contributing thereto.

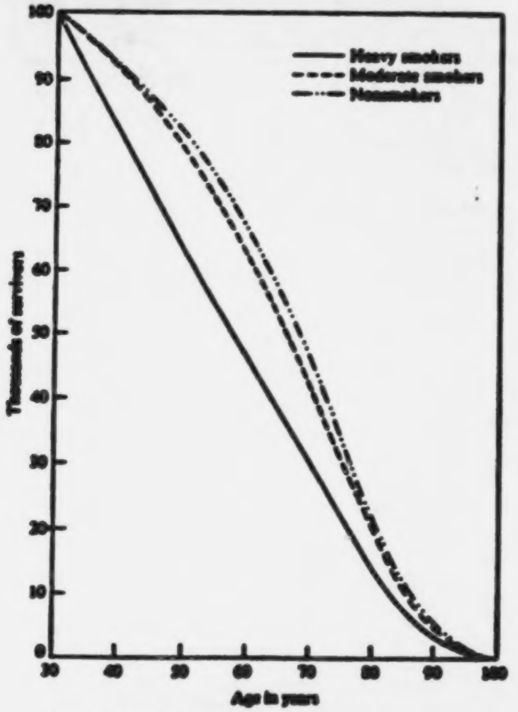
Tobacco

Inhaled tobacco smoke, a mixture of many toxic chemicals and several radioisotopes (8–10), is absorbed through the pulmonary circulation and conveyed by the general circulation as a systemic poison to every tissue and cell (11). The harmful effects of smoking tobacco are insidious, protean in nature, and difficult to measure. Hence, though smoking was suspected of diverse pathogenic effects during earlier centuries (12,13), the range and magnitude of these effects remained obscure until well into the twentieth century, awaiting for their discovery the invention (in 1881) of the cigarette rolling machine (13), the epidemic occurrence of lung cancer and other cigarette diseases several decades later, and improvements in medical science, death records, and epidemiology.

Although the classic studies of Raymond Pearl during the 1930s clearly delineated the extraordinary impact of smoking on longevity (Figure 1) (14), these disquieting findings were soon papered over by blatantly misleading advertising; and general recognition of the nature and magnitude of the morbidity and mortality hazard posed by tobacco did not occur until the second half of this century.

During the 1950s attention initially focused on the role of tobacco in causing cancers of the directly exposed tissues of the respiratory system, as revealed by retrospective epidemiological surveys in clinical centers (15–18). The association of cancer of the larynx, bronchus, and lung with smoking was so obvious and consistent that many epidemiologists were readily convinced of smoking causation (19–21). But when a number of statisticians who were themselves smokers criticized these studies and findings because of possible biases inherent in retrospective studies (22,23), prospective epidemiological studies were launched that yielded somewhat puzzling results in the late 1950s and early 1960s. While confirming the close relationship between smoking and cancer of the respiratory tract, these studies opened a Pandora's box by showing smokers to be dying at an accelerated rate from a great variety of diseases—cancers of many tissues, degenerative cardiovascular diseases, diseases of the urinary and digestive systems, and so on (24–29).

FIGURE 1 Tobacco use and longevity according to Raymond Pearl's 1938 study: survivorship of white males after age 30 in the United States, by smoking habits



SOURCE: From (34), pp. 216–217.

Data from two broad-based epidemiological studies of excess mortality from smoking among adult US males during the 1950s and 1960s are presented in Tables 1 and 2. The matched-pair analysis by Hammond (Table 1) (26) provides an incisive view of excess mortality during 34 months among adult males in 25 states who consumed 20 or more cigarettes daily at the time of enrollment. The more protracted study of US veterans by Rogot and Murray (Table 2) provides a similar comparison of mortality among "current smokers" with that among "nonsmokers" during 16 years of observation, 1954–69 (28). These studies indicated that at least 80 percent of male deaths from lung cancer were attributable to smoking, and that total excess mortality among smokers was more than five times the number of lung cancer deaths in the combined

TABLE 1 Mortality differentials between nonsmokers and heavy smokers among US males, by matched-pair analysis[a]: number of deaths from specified causes[b]

Cause of death	Never smoked regularly	Smoked 20+ cigarettes daily	Excess deaths among smokers	Mortality ratio: smokers ÷ nonsmokers
All causes	662	1,385	723	2.09
Emphysema	1	15	14	15.00
Cancer of directly exposed tissues	13	122	109	9.38
Buccal cavity, pharynx	1	3	2	3.00
Larynx	0	3	3	—
Lung and bronchus	12	110	98	9.17
Esophagus	0	6	6	—
Cancer of indirectly exposed tissues	83	139	56	1.67
Stomach	9	10	1	1.11
Colon, rectum	20	25	5	1.25
Liver, biliary passages	1	7	6	7.00
Pancreas	6	16	10	2.67
Bladder	1	2	1	2.00
Other specified sites	43	64	21	1.49
Site unknown	3	15	12	5.00
All cardiovascular diseases	401	854	453	2.13
Coronary heart disease	304	654	350	2.15
Aortic aneurysm	8	30	22	3.75
Cerebral vascular disease	44	84	40	1.91
All other cardiovascular disease	45	86	41	1.91
Other diseases	63	95	32	1.51
Gastric ulcer	3	5	2	1.67
Other specified diseases	59	86	27	1.46
Ill-defined diseases	1	4	3	4.00
Accidents, violence, suicide	53	66	13	1.25
No death certificate found	34	77	43	2.26

[a] Nonsmokers and heavy smokers were matched by age, race, height, education, religion, activity, drinking habits, residence, occupational exposures, sleep, exercise, and "severe nervous tension."

[b] Number of deaths during 34 months among 36,975 men who never smoked regularly and 36,975 men smoking 20 or more cigarettes daily at the time of enrollment in the study in 1959, ages 40–79.

SOURCE: Data restructured by the author from (26).

population of smokers and nonsmokers (Tables 1 and 2). Using lung cancer deaths as an index of total deaths from smoking, in 1964 I estimated that there were approximately 250,000 deaths from smoking in the United States during 1962 (29); and in 1967 I estimated that there were about 300,000 such deaths in the United States during 1966 (12).

Because cardiovascular disease death rates have fallen substantially during the last 15 years (30), while lung cancer death rates have continued to increase (Table 3), the lung cancer index of total excess mortality from smoking must be recalibrated by means of another broad-gauged prospective study of

TABLE 2 Observed deaths, expected deaths, and mortality ratios for current (time of enrollment) cigarette smokers among US veterans, 1954–69

Cause of death	Observed deaths	Expected deaths[a]	Mortality ratio (O ÷ E)
All causes	36,143	20,857	1.73
Respiratory diseases	2,129	481	4.43
Emphysema and bronchitis	1,364	113	12.07
Influenza and pneumonia	460	259	1.78
Pulmonary fibrosis and bronchiectasis	144	48	3.02
Pulmonary tuberculosis	81	36	2.27
Asthma	90	27	3.28
Cancer of directly exposed tissues	3,061	296	10.34
Buccal cavity, pharynx	202	33	6.12
Larynx	94	8	11.75
Lung and bronchus	2,609	231	11.29
Esophagus	156	24	6.50
Cancer of indirectly exposed tissues	4,547	3,292	1.38
Stomach	390	257	1.52
Intestines	662	597	1.11
Rectum	239	215	1.11
Liver, gallbladder, biliary passages	176	75	2.35
Pancreas	459	256	1.79
Kidney	175	124	1.41
Bladder	326	151	2.16
Prostate	660	504	1.31
Brain	160	152	1.05
Malignant lymphomas	370	347	1.07
Leukemias	333	207	1.61
All other cancers	597	407	1.47
All cardiovascular diseases	21,413	13,572	1.58
Coronary heart disease	13,845	8,767	1.58
Aortic aneurysm	900	172	5.23
Cor pulmonale	44	8	5.57
Hypertensive disease	1,107	724	1.53
Cerebral vascular disease	2,738	2,075	1.32
Peripheral vascular disease	20	6	3.52
Phlebitis and pulmonary embolism	214	175	1.22
Other diseases			
Ulcer of stomach, duodenum, jejunum	365	92	3.97
Cirrhosis of the liver	404	150	2.69
Nephritis, nephrosis, other kidney diseases	349	261	1.34
Diabetes	215	221	.97
All other diseases	2,801	2,100	1.33
No death certificate found	849	390	2.17

[a] "Expected deaths" are the number of deaths of smokers that would have occurred if mortality rates among nonsmokers had prevailed.

SOURCE: Data restructured by the author from (28).

smoking and mortality before it can be used to estimate total excess mortality from smoking during the 1980s. Such data should become available in a year or two from the current Cancer Prevention Survey II of the American Cancer

TABLE 3 Mortality from cancers of the trachea, bronchi, and lungs, by sex: United States, 1950–80

Year	Number of deaths: Total deaths	Number of deaths: Male deaths	Number of deaths: Female deaths	Percent female	Crude death rates (per 100,000 population): Both sexes	Crude death rates (per 100,000 population): Male	Crude death rates (per 100,000 population): Female
1980	103,844	75,535	28,309	27.3	45.8	68.6	24.3
1979	98,451	72,803	25,648	26.0	43.8	66.7	22.2
1978	95,086	71,006	24,080	25.3	42.8	65.8	21.1
1977	90,510	68,481	22,029	24.3	41.2	64.1	19.5
1976	86,412	65,910	20,502	23.7	39.7	62.3	18.4
1975	82,040	63,413	18,627	22.7	38.1	60.5	16.8
1974	78,873	61,611	17,262	21.9	37.0	59.3	15.8
1973	74,933	59,187	15,746	21.0	35.5	57.5	14.5
1972	72,610	57,668	14,942	20.6	34.7	56.5	13.9
1971	68,617	54,931	13,686	19.9	33.2	54.5	12.9
1970	65,168	52,801	12,367	19.0	32.1	53.4	11.9
1969	61,843	50,481	11,362	18.4	30.7	51.5	11.0
1968	59,367	48,831	10,536	17.7	29.8	50.3	10.3
1967	54,407	45,383	9,024	16.6	27.4	47.1	8.9
1966	51,478	43,174	8,304	16.1	26.3	45.2	8.4
1965	48,483	40,879	7,604	15.7	25.0	43.1	7.7
1964	45,838	38,909	6,929	15.1	23.9	41.5	7.1
1963	43,568	36,980	6,588	15.1	23.1	40.0	6.9
1962	41,376	35,312	6,064	14.6	22.3	38.7	6.4
1961	38,929	33,211	5,718	14.7	21.2	36.9	6.1
1960	36,420	31,257	5,163	14.2	20.3	35.4	5.7
1959	34,302	29,335	4,967	14.5	19.4	33.8	5.5
1958	32,316	27,527	4,789	14.8	18.6	32.3	5.4
1957	30,776	26,287	4,489	14.6	18.1	31.3	5.2
1956	29,181	24,817	4,364	15.0	17.5	30.1	5.2
1955	26,827	22,704	4,123	15.4	16.3	28.0	5.0
1954	24,788	20,911	3,877	15.6	15.4	26.4	4.8
1953	23,502	19,740	3,762	16.0	14.9	25.3	4.7
1952	21,582	17,821	3,761	17.4	13.8	23.2	4.7
1951	19,725	16,219	3,506	17.8	12.9	21.4	4.5
1950	18,313	14,922	3,391	18.6	12.2	20.8	4.7

NOTE: Solid rule differentiates between the International Classification of Diseases (ICD) 162 (1968–80) and the ICD 162 and 163 (1950–67).

SOURCES: *Vital Statistics of the United States, Annual Volumes*, 1950–78. National Center for Health Statistics and predecessor agencies, Washington, D.C.; and unpublished data, Statistical Resources Branch, National Center for Health Statistics, 1984.

Society. But meanwhile estimation of total excess mortality from smoking depends on the laborious task of assembling disparate estimates of excess mortality by disease process and body system for population subgroups, and relating these to long-term smoking patterns in the United States (Table 4) (31–33).

Readers should be mindful that all estimates of precocious mortality from addictive practices are at best rough approximations of actual relationships. The pathogenic effects of smoking are insidious, with mortality a func-

TABLE 4 Estimated percent of adult population smoking cigarettes regularly, by sex: United States, 1930–80[a]

Year	Male	Female	Combined
1930	—	—	15
1935	—	—	17
1940	—	—	20
1945	—	—	28
1950	—	—	36
1955	53	25	40
1960	52	34	42
1965	52	34	42
1970	44	32	38
1975	42	32	37
1980	38	30	33
25-year average	47	31	39

[a] Smoking levels by sex not available before 1955; percent of total adult US population smoking cigarettes, 1930–50, estimated from Department of Agriculture data on per capita cigarette sales during those years.
SOURCES: (8, 31, 33).

tion of the quantity of tobacco smoke inhaled during the smoker's lifetime, which depends on the number of cigarettes, pipefuls, and cigars smoked, the extent to which the smoke is inhaled, and the nature of the tobacco smoke (34). Yet because of the tendency of smokers to smoke consistently at certain levels during many years, useful approximations of tobacco consumption can be made for individuals and for the US population. These data can then be related to mortality by cause, age, sex, and time, to arrive at meaningful approximations of excess mortality attributable to smoking.

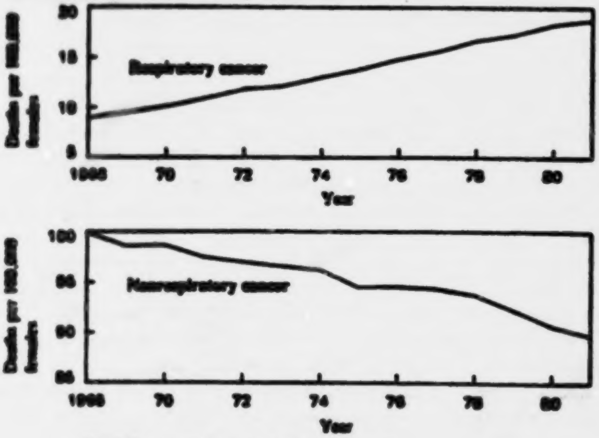
Cancer

Cancer is no longer the mysterious disease it seemed to be during many centuries. Rather, it is the understandable product of competitive reproduction of tissue cells, and natural selection of the more proliferative variants, leading to evolution of cell clones malignant to adjacent cells and to the host organism (35). Malignant cellular evolution is speeded by mutagenic environmental agents that alter genetic structures, and by environmental agents and life processes that injure and destroy cells and thus quicken cellular turnover. Such promotive agents are, by themselves, relatively weak carcinogens, but when preceded and/or accompanied by mutagenic agents their carcinogenic effects are greatly amplified. Because tobacco smoke is a potent mixture of mutagens and promotive agents, it has proved to be a powerful cause of cancer of directly exposed tissues of the respiratory system and of tissues elsewhere in the body exposed to circulating and swallowed mutagens (11,35).

A comprehensive analysis of the environmental causes of cancer, including estimates of mortality from smoking, has been provided by Doll and

Peto (36). They used cancer mortality rates observed among half a million nonsmokers in the American Cancer Society study of men and women in 25 states, 1959–72 (37), as their baseline and estimated that 30 percent of all cancer deaths in the United States during 1978 (122,000 deaths) were attributable to smoking. However, Doll and Peto's estimate is probably lower than actual occurrence, for the following reasons. First, they disregarded all effects of "passive smoking," which would surely contribute somewhat to mortality patterns (38) and would be an important factor for certain subgroups within the population. Second, they disregarded the findings of the National Mortality Survey, a follow-back survey conducted by the National Center for Health Statistics in 1966–68, which found 38 percent of all cancer deaths in the national sample attributable to smoking (39). Third, they disregarded the trend toward lower mortality rates from nonrespiratory cancer among women during the 1970s (40,41). (While the age-adjusted death rates for nonrespiratory cancer of men remained level during that decade, the rates for women dropped from 99.9 deaths per 100,000 population in 1968 to 89.8 in 1981; see Figure 2. In 1966, 19 percent of all cancer deaths in the United States were from respiratory cancer, compared with 26 percent of all cancer deaths in 1980. These divergent trends imply an increase in the proportion of all cancer deaths attributable to smoking during recent years [42].) Finally, they disregarded calculations based on the relative risk of cancer death among smokers and nonsmokers observed in the prospective studies of smoking and cancer in the United States by Hammond (26) and by Rogot and Murray (28).

FIGURE 2 Age-adjusted cancer death rates for females: United States, 1968–81



SOURCE: Annual Reports for 1968–81 from (41).

Hammond's matched-pair analysis, summarized in Table 1, provides a clearcut view of the differences in male mortality for nonsmokers and heavy smokers. Deaths from all causes among heavy smokers were 2.1 times the number of deaths among nonsmokers. Deaths from cancer among heavy smokers were 2.72 times the number of deaths among nonsmokers.

These relative risks of death from cancer among nonsmokers (1.00) and heavy smokers (2.72) can be combined with the percentages of the US population smoking during the last quarter century, shown in Table 4, to provide a rough indication of US cancer mortality in 1980 attributable to smoking.*

For males, if 53 (percent nonsmokers) × 1.00 (relative risk for nonsmokers) = 53 represents deaths contributed by nonsmokers; and 47 (percent smokers) × 2.72 (relative risk for smokers) = 128 represents deaths contributed by smokers; then 53 + 128 = 181 represents total male cancer deaths in the United States in 1980 (225,949), of which 81 ÷ 181 = 44.8 percent, or 101,000 deaths, would be attributable to smoking.

Likewise, for females, if 69 (percent nonsmokers) × 1.00 (relative risk for nonsmokers) = 69 represents deaths in 1980 contributed by nonsmokers; and 31 (percent smokers) × 2.72 (relative risk for smokers) = 84 represents deaths contributed by smokers; then 69 + 84 = 153 represents total female cancer deaths in the United States in 1980 (190,561), of which 53 ÷ 153 = 34.6 percent, or 66,000 deaths, would be attributable to smoking.†

Hence, from these calculations, the combined total cancer mortality in 1980 attributable to smoking would be 167,000 deaths. But because this calculation is based on the cancer death risk of smoking 20 or more cigarettes daily, the actual number of cancer deaths attributable to smoking in the US population would probably be substantially less.

The Rogot and Murray study of US veterans (Table 2) (28) provides a less clearcut comparison of cancer death rates for smokers and nonsmokers (because many were light smokers, many smokers quit smoking during the 16-year observation period, and because of the lack of matching for confounding variables), but use of that relative risk of cancer death for smoking veterans (2.12) to calculate total cancer mortality attributable to cigarettes provides a useful estimate dependably less than actual cigarette cancer mortality.

For males,

53 × 1.00 = 53; 47 × 2.12 = 100;
53 + 100 = 153; 53 ÷ 153 = 34.6%;
34.6% × 225,948 male cancer deaths =
78,000 male cancer deaths attributable to smoking.

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* Because only 1 percent of total cancer deaths occur to children, they are disregarded in these calculations. Also some of the child deaths from cancer may be due to parental and passive smoking.

† The justification for using the same relative risks of smoking for females as for males is that the NCHS National Mortality Survey found the relative risks of smoking to be virtually the same among US males and females: 1.70 and 1.77 respectively (39).

For females,

69 × 1.00 = 69; 31 × 2.12 = 66;
69 + 66 = 135; 35 ÷ 135 = 25.9%;
25.9% × 190,561 female cancer deaths =
49,000 female cancer deaths attributable to smoking.

Total cancer deaths in 1980 attributable to smoking by this calculation would be 127,000.

It seems likely that these two values for cancer deaths in 1980 attributable to smoking—167,000 deaths based on the relative risk from the Hammond study (26), and 127,000 based on the relative risk from the US veterans study by Rogot and Murray (28)—bracket the actual number of cancer deaths in the United States that year attributable to smoking. Hence, I prefer the estimate that approximately 147,000 of the 416,510 total cancer deaths in 1980 (35 percent) were excess cancer deaths caused by smoking cigarettes. And because cancer mortality rates *not* caused by smoking have continued to decrease during recent years (Figure 2), I estimate that approximately 40 percent of all US cancer deaths in 1984 are attributable to tobacco—to the smoking of cigarettes, pipes, and cigars; to the breathing of tobacco smoke generated by others; and to the chewing and snuffing of tobacco.

Diseases of the circulatory system

Coronary heart disease emerged from relative obscurity during the 1920s, and mortality therefrom rapidly increased during the 1930s and 1940s to assume first rank among all causes of death in the United States (2). In 1980 coronary (ischemic) heart disease caused 565,755 deaths—58 percent of all deaths from cardiovascular disease (988,545) and 28 percent of deaths from all causes (1,989,841) (5).

Diagnostic inadequacies, obscure cause-of-death certification, and sluggish epidemiology delayed recognition of the important role of smoking in the causation of coronary heart disease and other arteriosclerotic cardiovascular diseases. Such recognition was particularly dependent on well-designed prospective epidemiological studies, such as those that emerged during the 1950s and 1960s (24–28). As indicated by Hammond's findings (Table 1), excess cardiovascular disease mortality attributable to smoking constituted 36 percent of total cardiovascular disease mortality among the matched population of smokers of 20 or more cigarettes daily and nonsmokers (26). The Rogot and Murray study of US veterans (28) found that 22 percent of all cardiovascular disease deaths were excess cardiovascular disease deaths among smokers (Table 2). Intensity of smoking is an important determinant of pathologic effects upon the cardiovascular system. Those smoking 40 or more cigarettes daily have coronary heart disease death rates three or four times the rate of nonsmokers. Coronary heart disease death rates rapidly decline when smokers quit smoking (7,43).

In the Hammond study (Table 1), deaths from all causes among smokers were 2.1 times the number of deaths from all causes among nonsmokers, and 67 percent of the excess deaths among smokers were caused by cardiovascular diseases. In the study of US veterans (Table 2), deaths from all causes among smokers were 1.73 times the number of deaths from all causes among nonsmokers, and 51 percent of the excess mortality among smokers was cardiovascular disease mortality.

The 1983 comprehensive report of the US Surgeon General on cardiovascular disease and smoking estimated that "up to 30 percent of all coronary heart disease deaths in the United States each year" can be attributed to cigarette smoking—about 170,000 deaths in 1980 (7,43). That publication does not present an estimate of the percent of total cardiovascular disease mortality attributable to smoking, but cites with favor the estimates of Luce and Schweitzer and of Boden, who "each attributed 25 percent of all circulatory diseases to smoking"(43).

No one has calculated cardiovascular disease death rates among nonsmokers in the American Cancer Society 25-state study, analogous to those published by Garfinkel (37) and used by Doll and Peto (36) for estimation of cancer mortality attributable to smoking. But we can gain an impression of excess cardiovascular disease mortality attributable to smoking by combining relative risks for smokers (Tables 1 and 2) with the percent of the adult US population smoking cigarettes during the last quarter century (Table 4).

For males,

$53 \times 1.00 = 53; 47 \times 2.13 = 100;$
$53 + 100 = 153; 53 \div 153 = 34.6\%;$
$34.6\% \times 503{,}749$ male cardiovascular deaths =
175,000 male cardiovascular deaths attributable to smoking.

For females,

$69 \times 1.00 = 69; 31 \times 2.13 = 66;$
$69 + 66 = 135; 35 \div 135 = 25.9\%;$
$25.9\% \times 484{,}796$ female cardiovascular deaths =
126,000 female cardiovascular deaths attributable to smoking.

Thus, based on the relative risk of cardiovascular death (2.13) observed among heavy smokers in the Hammond study, the combined total excess cardiovascular mortality in 1980 attributable to smoking would be 301,000 deaths. But because intensity of smoking is an important determinant of cardiovascular disease, and the above risk was for heavy smokers, we can be fairly confident that the actual excess cardiovascular mortality in 1980 attributable to smoking was substantially less than 301,000 deaths.

If, on the other hand, we use the relative risk of cardiovascular death among average smokers and ex smokers observed in the US veterans study by Rogot and Murray, a much lower estimate of cardiovascular mortality attributable to smoking is obtained.

For males,

53 × 1.00 = 53; 47 × 1.58 = 74;
53 + 74 = 127; 27 ÷ 127 = 21.3%;
21.3% × 503,749 = 107,000 male cardiovascular deaths
attributable to smoking.

For females,

69 × 1.00 = 69; 31 × 1.58 = 49;
69 + 49 = 118; 18 ÷ 118 = 15.3%
15.3% × 484,796 = 74,000 female cardiovascular deaths
attributable to smoking.

The combined total of 181,000 excess cardiovascular deaths in 1980 attributable to smoking by this formula is probably lower than actual mortality for several reasons.

1 It disregards the number of US veterans who quit smoking during the 16 years, 1954–69. Due to the influence of the first Surgeon General's report on smoking and health, issued in 1964 (44), among other reasons, the number of veterans who quit smoking during the study period was considerable. It is known that the risk of death from cardiovascular disease drops rapidly when smokers quit smoking (7, 43).
2 It disregards all effects of "passive smoking."
3 Others have estimated up to 170,000 deaths from coronary heart disease in 1980 attributable to smoking (43). Surely additional cardiovascular deaths attributable to smoking—from such diseases as cor pulmonale, aneurysm of the aorta, hypertensive heart disease, cerebrovascular disease, arteriosclerosis unspecified, thromboembolism—would total far more than 11,000 deaths.

Hence, I prefer an estimate of excess cardiovascular mortality in 1980 attributable to smoking midway between the values calculated above—240,000 deaths, or 24 percent of total cardiovascular disease mortality in 1980.

Diseases of the respiratory system other than cancer

The third major category of excess mortality from smoking is comprised of the noncancerous but nevertheless life-destroying diseases of the respiratory system. During earlier decades such deaths were largely classified as emphysema deaths (3), but during the last 20 years a progressive trend has occurred toward lumping emphysema and chronic bronchitis deaths in the category titled Chronic Obstructive Pulmonary Diseases (International Classification of Diseases 490–496) (45). As indicated in Tables 1 and 2, emphysema is the disease most distinctively characteristic of smoking—with 15 deaths from emphysema among smokers for every such death among nonsmokers (24). Although the smoking connection is somewhat less obvious for other subcategories of respiratory diseases, the relative risk of death from all kinds of respiratory diseases among smokers in the US veterans study was 4.43 times that of nonsmokers (Table 2). Again, combining this risk factor with the proportions of the US adult population smoking during the last quarter century—men (47 percent), women (31 percent), combined (39 percent)—1980 excess adult mortality from respiratory diseases attributable to smoking is calculated thus:

For males,

53 × 1.00 = 53; 47 × 4.43 = 208;
53 + 208 = 261; 161 ÷ 261 = 61.7%;
61.7% × (total male mortality from noncancerous respiratory diseases, 64,000 deaths) = 39,000 male deaths from noncancerous respiratory diseases attributable to smoking.

For females,

69 × 1.00 = 69; 31 × 4.43 = 137;
69 + 137 = 206; 106 ÷ 206 = 51.5%;
51.5% × (total female mortality from noncancerous respiratory diseases, 43,000 deaths) = 22,000 female deaths from noncancerous respiratory diseases attributable to smoking.

Hence, total adult mortality from noncancerous diseases of the respiratory system in 1980 attributable to smoking is estimated by this method to have been about 61,000 deaths. Many studies consistently reveal much higher morbidity and mortality rates for smokers from virtually every category of respiratory disease—emphysema, other chronic obstructive pulmonary disease, tuberculosis, pneumonia, influenza, pneumoconiosis, bronchiectasis, and asthma—which is what would be expected from the toxic, tissue-crippling effects of smoking upon the entire respiratory system. Since a draft of this paper was presented to an interagency work group, in March 1984, the Office of Smoking and Health has issued a report on Chronic Obstructive Lung Disease that buttresses my estimate of 61,000 excess deaths: "The three chronic obstructive lung diseases [COLD] related to smoking may account for almost 62,000 deaths in 1983, compared to 56,920 deaths in 1982, according to provisional mortality data recently published by the NCHS. These data are based on a 10 percent sample of death certificates for the 12 month period ending in November [1983]. This is a dramatic increase from 1970 when slightly over 33,000 deaths were attributed to COLD" (48).

Diseases of the digestive system

Epidemiological studies consistently show higher peptic ulcer disease morbidity and mortality rates for smokers than for nonsmokers (8,27,47). On the basis of the approximate average relative risk of death from peptic ulcers among nonsmokers (1.00) and smokers (2.5) observed in a number of studies (24,27), the total number of peptic ulcer deaths, both sexes combined, in 1980 attributable to smoking is calculated as follows:

61 × 1.00 = 61; 39 × 2.5 = 95;
61 + 95 = 156; 56 ÷ 156 = 35.9%;
35.9% × 6,115 = 2,200 peptic ulcer deaths attributable to smoking, or 2,000 after rounding.

Cirrhosis of the liver is closely linked to smoking and alcoholism, which act synergistically in its production. The relative risk of death from cirrhosis among smoking US veterans (Table 2) was 2.7 times that among nonsmoking veterans. Combining these relative risks with the proportions smoking, for both sexes combined, we calculate as follows:

61 × 1.00 = 61; 39 × 2.7 = 105;
61 + 105 = 166; 66 ÷ 166 = 39.8%;
39.8% × (total number of cirrhosis deaths in 1980, 30,583) = 12,000 cirrhosis deaths attributable to smoking.

For those puzzled by how smoking causes cancer and ulcers of the gastrointestinal tract, and cancer and cirrhosis of the liver, a brief discussion of pathogenic mechanisms is in order. When tobacco smoke is inhaled deeply into the lungs, most of it remains there for a while. Then readily soluble components, such as nicotine, enter the pulmonary circulation and are conveyed by the systemic circulation throughout the body. Less soluble tars caught in the bronchial mucous lining are moved upward by ciliary and coughing action to the pharynx, swallowed, and thus enter the esophagus, stomach, intestine, portal circulation, and liver. Hence, excess mortality from cancerous and ulcerative diseases of the gastrointestinal tract and cancer and cirrhosis of the liver are understandable outcomes of chronic smoke inhalation.

External causes of injury

A large proportion of fires in homes and hotels are caused by smoking. Insurance companies estimate 2,500 deaths from accidental fires caused by smoking in 1980 (49). Additionally, smoking contributes to many transportation accidents through distraction, carbon monoxide intoxication, and ignition. I estimate that smoking caused about 1,500 excess deaths from accidents other than fire during 1980, for a total of 4,000 excess deaths from all kinds of accidents attributable to smoking.

Miscellaneous and ill-defined diseases

As indicated in Tables 1 and 2 and documented in many studies (8,12–14,24,27,28), smoking contributes to increased mortality from a broad range of diseases—infections; endocrine, nutritional, metabolic, and immunity disorders; diseases of blood and blood-forming organs; diseases of the nervous system; diseases of the genitourinary system; and so on. I estimate that the number of excess deaths from such miscellaneous and ill-defined diseases in 1980 attributable to smoking cigarettes totaled at least 15,000.

Infant mortality attributable to smoking

In 1980, 45,526 infant deaths were reported in the United States, and because the main causes of infant mortality in this country are low birthweight and other perinatal abnormalities—to which maternal smoking contributes in large measure (50)—smoking was an important contributor to overall infant mortality.

The National Mortality Survey by the National Center for Health Statistics in 1980 found that 25 percent of the women in the nationally representative sample of mothers had smoked regularly during their pregnancies examined in the survey (52). Hence, of the 3.6 million women who delivered in 1980, approximately 900,000 women smoked during pregnancy. Because maternal smoking during pregnancy increases "spontaneous" abortion by approximately five abortions per hundred pregnancies (50), such smoking by nearly one million women in the United States probably caused approximately 50,000 abortions in 1980.

The overall infant mortality rate in the United States during 1980 was 12.5 per thousand live births (5). Based on earlier findings of the effects of smoking upon reproduction (50–52), it is estimated that the infant mortality rate among infants born of nonsmoking mothers was approximately 11.5, versus a rate of about 16.5 among infants born of smoking mothers. Had the lower estimated infant mortality rate of 11.5 per thousand births to nonsmoking mothers applied to all 3.6 million infants born in 1980, then the total number of infant deaths in the United States would have been 41,760 instead of 45,526. Hence, approximately 4,000 infant deaths in the United States during 1980 were attributable to smoking.

In summary, as presented in Table 5, I estimate that the total number of excess deaths in the United States in 1980 attributable to smoking cigarettes was approximately 485,000. Addition thereto of deaths caused by the smoking of pipes and cigars, the passive inhalation of environmental tobacco smoke, and the chewing and snuffing of tobacco probably raises the total US tobacco death toll in 1980 to more than a half million—more than one-fourth of all deaths from all causes (1,989,841).

TABLE 5 Estimated number of deaths attributable to smoking cigarettes: United States, 1980

Anatomic site or nature of disease (ICD number)	Number of deaths
Cancers (140–239)	147,000
Diseases of circulatory system (390–459)	240,000
Coronary heart disease (410–414)	170,000
Other vascular diseases	70,000
Diseases of respiratory system other than cancer (460–519)	61,000
Emphysema (492)	13,000
Chronic bronchitis and other respiratory diseases	48,000
Diseases of digestive system (520–579)	14,000
Diseases of esophagus, stomach, duodenum (530–537)	2,000
Cirrhosis and other diseases of digestive system	12,000
Infant mortality (760–779)	
(Caused by maternal smoking, low birthweight, and other congenital disabilities)	4,000
External causes of injury (E800–E999)	4,000
Injuries caused by fire and flames (E890–E899)	2,500
Other accidental injuries	1,500
Miscellaneous and ill-defined diseases	15,000
Total	485,000

Alcohol

After tobacco, alcohol is the mind-altering substance most abused in the United States, as in many other societies. While many of its effects are immediate and readily apparent, many others are subtle, long delayed, and difficult to measure. As with smoking, measurement of the carcinogenic effects of alcohol awaited improvements in medical science, vital records, and epidemiology.

Because alcohol has few, if any, mutagenic effects (53), its contribution to cancer of the alimentary tract—mouth, pharynx, esophagus, stomach—and of the liver, is probably mainly a function of the extent to which consumption of alcohol causes destruction and accelerated turnover of mucosal and parenchymal cells, thereby serving as a promotive agent (co-carcinogen). Basic carcinogenic principles (35) imply that such accelerated turnover of somatic cells is far more likely to result in the evolution of a malignant clone if preceded and/or accompanied by mutagenic agents. Hence, addiction to tobacco and alcohol is far more productive of cancers of the alimentary tract than addiction to alcohol alone.

Doll and Peto estimated that approximately 3 percent of all cancer deaths in 1978 were attributable to alcohol—while noting that this proportion was not independent of smoking experience (36). Their estimate, if applied to 1980 cancer mortality (416,509), yields 12,495 cancer deaths from alcohol—again, not independent of smoking experience. The 9,260 cancer deaths ascribed to alcohol in Table 6 are those attributable mainly to alcohol, and are additional to those previously attributed mainly to tobacco.

TABLE 6 Estimated number of deaths attributable to alcohol: United States, 1980

Cause of death (ICD number)	Number of deaths	Percent attributable to alcohol	Estimated number attributable to alcohol
Alcohol as the main cause			
Alcoholic psychoses (291)	454	100	454
Alcohol dependence syndrome (303)	4,350	100	4,350
Nondependent use of alcohol (305.0)	889	100	889
Alcoholic polyneuropathy (357.5)	4	100	4
Alcohol cardiac myopathy (425.5)	650	100	650
Alcohol gastritis (535.3)	84	100	84
Alcoholic fatty liver (571.0)	1,166	100	1,166
Acute alcoholic hepatitis (571.1)	794	100	794
Alcoholic cirrhosis of the liver (571.2)	9,166	100	9,166
Alcoholic liver damage unspec. (571.3)	1,812	100	1,812
Accidental poisoning by alcohol (E860)	218	100	218
Subtotal			19,587
Alcohol as a contributing cause			
Cancer of directly exposed tissues			
Malignant neoplasm of lip, oral cavity, pharynx (140–149)	8,553	25	2,138
Malignant neoplasm of larynx (161)	3,412	25	853
Malignant neoplasm of stomach (151)	14,372	20	2,874
Malignant neoplasm of liver (155)	5,618	25	1,404
Subtotal			9,280
Other diseases			
Diabetes mellitus (250)	35,649	5	1,782
Hypertensive diseases (401–404)	32,633	5	1,632
Pneumonia and influenza (480–487)	54,619	5	2,731
Diseases of esophagus, stomach, duodenum (530–537)	8,734	10	873
Chronic liver disease and cirrhosis (571)—not specified as alcoholic	18,645	25	4,661
Subtotal			11,679
Accidents			
Railway accidents (E800–E807)	632	10	63
Motor vehicle traffic accidents (E810–E819)	51,930	50	25,965
Other road vehicle accidents (E826–E829)	232	20	46
Water transport accidents (E830–E838)	1,429	20	286
Air and space accidents (E840–E845)	1,494	10	149
Accidental falls (E880–E888)	13,294	25	3,324
Accidents caused by fire and flames (E890–E899)	5,822	25	1,455
Accidents due to natural and environmental factors (E900–E909)	3,194	25	799
Accidents caused by submersion, suffocation, and foreign bodies (E910–E915)	10,216	35	3,576
Other accidents (E916–E928)	8,744	25	2,186
Subtotal			37,857
Violence			
Suicide (E950–E959)	26,869	30	8,061
Homicide (E960–E969)	23,967	50	11,984
Undetermined whether accidental or purposely inflicted (E980–E989)	3,663	30	1,099
Subtotal			21,144
All causes			99,547

In addition to its co-carcinogenic effects, alcohol kills by: (1) acute intoxication; (2) debilitating effects of excessive chronic consumption, causing alcoholic psychoses, myocarditis, pneumonia, polyneuritis, and so forth; (3) influencing judgment and behavior, thereby contributing to many deaths from accidents, homicides, and suicides (53,54). Heavy alcohol consumption during pregnancy causes the fetal alcohol syndrome, other dysmorphia, and stunting (reduced birthweight) (53,55,56). Hence alcohol is an important cause of morbidity and contributes to infant mortality (53). Fortunately, American women have sharply reduced gestational drinking during recent years (52), and the number of infant deaths per annum attributable to maternal–fetal alcoholism is now estimated to be about 1,000—about one-fourth the number of such deaths ascribed to maternal smoking.

As with smoking, estimates of total excess mortality attributable to alcohol are necessarily somewhat impressionistic (53,57); but the numbers of deaths, by category, attributed to alcohol in Table 6 were carefully chosen on the basis of the literature, examination of death categories, and in-depth discussions with key staff of the National Institute on Alcohol Abuse and Alcoholism. The 100,000 deaths ascribed to alcohol represent approximately 5 percent of total US mortality in 1980—about one-fifth the number of deaths attributable to smoking.

Other addictive substances

Mortality attributable to abuse of drugs other than tobacco and alcohol occurs mainly because of: acute drug overdose; debilitative, carcinogenic, and psychic effects of chronic drug use; behavioral changes and misjudgments occurring while under the influence of drugs—accidents, homicides, suicides; violence among drug traffickers; and infections acquired by intravenous administration of drugs.

Careful scrutiny of the detailed presentation of US mortality provided by the National Center for Health Statistics (58) identified many categories to which addictive use of diverse drugs contributed (Table 7). The judgment of what percent of deaths in each category can justly be ascribed to drug addiction is relatively simple for categories such as "drug psychoses" or "drug dependence," where the dominant role of drugs in the subject's demise was certified by the attending physician or medical examiner; but this judgment is necessarily impressionistic for such other categories as infections, pneumonia, nutritional deficiencies, accidents, homicides, and suicides. Official mortality records are a poor guide to addiction deaths due to acute drug overdose. Fewer than 1,000 deaths in the United States in 1980 were attributed to drug overdose on death certificates (58), whereas the medical examiner reports of the Drug Abuse Warning Network (DAWN) system of the National Institute on Drug Abuse identified 3,040 such deaths in 1982 (59). Because the DAWN reporting system covers only 26 major communities—one-third of the total US popu-

TABLE 7 Estimated deaths attributable to addictive substances other than tobacco and alcohol: United States, 1980

Cause of death (ICD number)	Number of deaths	Percent attributable to addictive substances	Estimated number attributable to addictive substances
Selected causes			
Septicemia (038)	9,438	10	944
Viral hepatitis (070)	809	30	243
Cancer of respiratory tract (160–165)	108,504	2	1,084
Nutritional deficiencies (260–269)	2,364	10	236
Other metabolic and immunity disorders (270–279)	7,459	10	746
Drug psychoses (292)	4	100	4
Other psychoses (295–299)	658	10	66
Drug dependence (304)	629	100	629
Nondependent abuse of drugs (305)	1,108	10[a]	111[a]
Pneumonia and influenza (480–487)	54,619	5	2,731
Diseases of skin and subcutaneous tissue (680–709)	581	10	58
Ill-defined and unknown causes (797–799)	27,282	10	2,728
Subtotal			9,580
Accidents			
Motor vehicle traffic accidents (E810–E819)	51,930	10	5,193[a]
Water transport accidents (E830–E838)	1,429	10	142[a]
Air and space transport accidents (E840–E845)	1,494	10[a]	150[a]
Accidental poisoning by opiates and related narcotics (E850.0)	322	100	322
Accidental poisoning by barbiturates (E851)	155	100	155
Accidental poisoning by tranquilizers (E853)	110	100	110
Accidental poisoning by other psychotropic agents (E854)	161	100	161
Accidental falls (E880–E888)	13,294	20[a]	2,658[a]
Other accidents (E916–E928)	8,744	10[a]	874[a]
Subtotal			9,765
Other causes			
Suicide (E950–E959)	26,869	20[a]	5,374
Homicide (E960–E969)	23,967	20[a]	4,794[a]
Undetermined whether accidental or purposely inflicted (E980–E989)	3,663	20[a]	732[a]
Subtotal			10,900
All causes			30,245

[a] Other than those attributable to alcohol and tobacco.

lation—I estimate that US mortality in 1980 attributable to acute overdose probably exceeded 5,000 deaths. Closely associated with overdose deaths from intravenous use of heroin and cocaine are deaths from transmitted infections—especially hepatitis B and, recently, the agent(s) of acquired immunodeficiency syndrome (AIDS). Such deaths now probably exceed 1,000 per annum.

Chronic use of drugs other than tobacco and alcohol no doubt contributes to the increased occurrence of respiratory cancer, chronic obstructive pulmonary disease, pneumonia, nutritional deficiencies, drug neuroses and psychoses, and so forth. But the numbers of deaths in respective categories attributed to drug abuse are impressions based on reports of other investigators who attempted to identify all drug-related deaths in defined populations (60–65).

In summary, the number of deaths in the United States in 1980 attributable to addictive substances other than tobacco and alcohol is estimated to have been about 30,000—between 1 and 2 percent of total mortality.

Altogether, mortality in the United States during 1980 attributable to abuse of all addictive substances probably totaled about 630,000 deaths—500,000 from tobacco, 100,000 from alcohol, and 30,000 from other addictive substances—which was nearly one-third of all deaths from all causes.

Addiction and the developing world

Availability of addictive substances at the local level has throughout history been the prime determinant of drug abuse behavior (66). Alcohol, a natural product of fermentation, was the main substance of abuse in most countries until the age of exploration (beginning in the 1400s) made many more addictive substances internationally available—including tobacco, opium, coca leaves, and marihuana. Addictive substances are alike in that addicted individuals will pay premium prices to continue their consumption. Furthermore, these substances are relatively easy to transport and store. Hence, as the various addictive substances were introduced, they quickly became important articles of commerce; and taxes levied upon their sale soon became an important source of revenue.

Initially, addictive substances were valuable exports of the less developed countries to the more developed countries. But such trade soon became controlled by the more powerful commercial interests of the developed countries and by government monopolies.

During earlier centuries, the poorest and least developed countries were protected from drug purveyors by their abject poverty and remoteness. At least for tobacco, this is no longer the case. Revolutionary changes in transportation, communications, and marketing during recent decades, plus some economic improvement in many countries, have triggered a massive movement by the tobacco interests to capture "the last big market"—namely, the countries of the Third World. Compared with the industrialized countries, whose tobacco consumption is declining at an annual rate of 1.1 percent, Third World consumption is increasing by 2.1 percent per annum (67).

Tobacco is now produced in more than 100 countries. Summary statistics indicating recent trends in cigarette manufacturing are shown in Table 8 (68). Both production and consumption are increasing rapidly in many less developed countries. For example, during 1978–82, China increased its cigarette production by 52 percent, from 591 to 900 billion pieces. China now ranks number

TABLE 8 Annual cigarette production (in millions of pieces): the 12 largest producing countries (in 1982) and world regions, 1973–82

	Average 1973/77	1978	1979	1980	1981	1982
Largest producers						
China	575,200	591,000	651,000	700,000	866,000	900,000
United States	657,934	695,900	704,400	714,200	736,500	694,200
Soviet Union*	371,400	377,400	380,300	365,000	370,000	375,000
Japan	288,131	302,574	308,260	303,177	306,634	308,700
Germany (FRG)	139,515	149,700	157,500	157,000	167,816	149,800
United Kingdom	137,100	157,576	133,110	155,618	149,640	144,610
Brazil	110,186	137,600	137,000	142,700	135,000	133,200
Spain	58,360	62,500	74,000	86,000	93,900	97,500
Bulgaria	73,241	80,000	82,000	86,109	93,440	95,250
India	64,279	71,000	78,804	79,500	86,800	90,200
Poland	83,710	90,786	91,400	93,446	83,010	87,458
Indonesia	55,486	68,800	69,756	63,900	92,100	87,300
World regions						
Asia	1,310,404	1,359,910	1,480,317	1,619,896	1,770,030	1,826,560
North America	684,886	854,224	870,085	883,196	906,461	863,886
Europe (EEC)	545,336	561,576	587,161	568,259	568,404	554,500
Soviet Union*	371,400	377,400	380,300	365,000	370,000	375,000
Eastern Europe	258,953	281,315	286,713	296,901	293,086	298,058
Other West and South Europe	170,839	192,674	213,658	225,634	237,721	234,862
South America	204,894	237,246	242,892	248,899	226,258	229,378
Africa	117,563	138,900	142,143	149,502	151,475	154,885
Oceania	38,005	40,061	40,042	42,083	42,801	41,577
World total	3,821,488	4,073,304	4,211,511	4,398,642	4,566,716	4,578,406

*Includes Papyrosa.
SOURCE: From (68).

one in tobacco production—ahead of the United States and the Soviet Union. Rapid increases in cigarette production (and consumption) have also occurred in Algeria, Egypt, Bangladesh, India, Indonesia, Korea, Malaysia, Pakistan, and Thailand.

Smoking during pregnancy, a doubly destructive practice prevalent in the United States, Europe, and Latin America (see Table 9), is not yet common in most African and Asian countries (69); but intense marketing pressure could greatly change that situation in a decade or two. Sadly, even as the developing countries move to shed their infectious disease burdens, by adopting smoking as a common practice they are assuming the chronic disease burdens now characteristic of the United States and other developed countries. Furthermore, in the Third World, tobacco production and consumption competes directly with production and consumption of food—contributing to the malnutrition of poor families and to waste of scant wood and land resources (51,70).

Public health leaders have called attention to these unfortunate trends (71,72), but until now the tobacco interests have ignored their importunings while seeking maximum profits regardless of health costs. But this would change if tobacco purveyors were held liable for the damages caused by to-

TABLE 9 Smoking during pregnancy, by region and country[a]

Region and country	Number of participating hospitals	Number of MCM 900 records analyzed	Number responding to smoking question	Women smoking during pregnancy	
				Number	Percent
Developing countries					
Africa					
Egypt	6	10,278	10,273	120	1.2
Sudan	3	1,180	1,135	8	0.7
Tunisia	1	148	143	1	0.7
Zaire	1	1,033	1,032	0	0.0
Asia					
Bangladesh	12	9,261	9,249	311	3.4
India	12	16,848	16,847	62	0.4
Indonesia	12	33,566	33,563	252	0.8
Iran	1	19,932	19,932	188	0.9
Jordan	1	438	432	12	2.7
Pakistan	2	1,257	1,254	1	0.1
Philippines	1	199	199	11	5.5
Sri Lanka	3	4,092	4,090	5	0.1
Taiwan	1	2,916	2,916	18	0.6
Thailand	2	6,275	5,808	32	0.6
Latin America					
Brazil	9	11,520	11,434	2,301	20.1
Chile	4	10,838	10,833	4,223	39.0
Colombia	—	580	580	109	18.8
Costa Rica	1	1,600	1,600	139	8.7
El Salvador	1	4,399	4,383	92	2.1
Honduras	2	17,482	17,472	891	5.1
Mexico	7	7,562	7,560	663	8.8
Panama	1	6,934	6,934	445	6.4
Venezuela	8	11,874	11,771	2,824	24.0
Developing country subtotal	84	186,152	185,380	12,708	6.9
Developed countries					
Austria	1	4,477	4,468	782	17.5
Belgium	2	1,187	1,084	291	26.8
Canada	1	972	971	250	25.7
Hungary	2	11,480	11,388	1,512	13.3
Ireland	1	999	998	287	28.8
Italy	6	3,740	3,745	977	26.1
Japan	2	794	788	68	8.6
Scotland	1	799	777	285	36.7
Sweden	1	1,891	1,887	656	34.8
United States	2	1,346	1,336	258	19.4
Germany (FRG)	3	2,071	2,041	645	31.6
Yugoslavia	2	2,832	2,832	552	19.5
Developed country subtotal	24	32,487	32,157	6,570	20.4
All countries	108	218,639	217,537	19,278	8.9

[a] These data were collected by the Maternity Care Monitoring program of the International Fertility Research Program, Research Triangle Park, North Carolina, with support from the Office of Population, US Agency for International Development; data are from 108 participating hospitals in 34 countries.

SOURCE: - From (60).

bacco—either by the mechanism of greatly increased taxes upon sale of tobacco products or by legal suits for health-damage compensation (13). Such a prospect appears distant.

As with tobacco, the developing countries should beware that alcoholism may increase as they industrialize and urbanize—as it did in the United States and Europe (66)—unless they take farsighted actions to control and moderate availability and consumption. Alcohol poses a particular hazard when used by operators of machinery and high-speed vehicles; but because of lack of mutagenicity, the deleterious effects of alcohol are less insidious than those of tobacco. Many studies have demonstrated that moderate consumption of alcohol need not subtract from longevity (53,73). Hence the social adaptation needed to avoid excess mortality attributable to alcohol may be quite different from that needed to avoid excess mortality from tobacco. This, for the reason that tobacco smoke is heavily laden with radioisotopes and other mutagens (8–10), and the biological principle that there is no threshold below which exposure to ionizing radiation and other mutagens does not contribute to increased mortality in large populations (74).

Addictive substances other than tobacco and alcohol have also been extensively abused in many less developed countries, and pose an ongoing threat. Although the crass imperialistic promotion of addiction that was a prominent feature of the eighteenth and nineteenth centuries (66) has waned, the vigorous and skillful promotional efforts of the multinational tobacco companies, the economic interests of local tobacco producers, and the activities of national tobacco monopolies are an even greater threat to the health of the developing countries.

Discussion

The ubiquitous use of tobacco in American society since its beginning has made the perception and measurement of its deleterious health effects exceedingly difficult. Even nonsmokers have suffered extensive health damage from the smoking of relatives, friends, and other associates.

The harmful effects of smoking are insidious, and many smokers fail to understand the ultimate threat to health and life posed by this commonplace and seemingly benign practice. An analogy with the rat poison Warfarin may serve to delineate the smoking problem. Warfarin, the leading rat poison during the past 30 years, owes much of its continued effectiveness to the fact that its poisonous nature is not immediately discernible to the rat. The first few times a rat eats Warfarin, no toxic effects are evident. But with continued consumption, the rat's blood clotting mechanism fails and the rat dies of internal bleeding. However, because many surviving rats have eaten Warfarin without apparent injury, they fail to connect the increasing mortality among rat acquaintances with the eating of Warfarin, and continue eating it until they, in turn, die.

Likewise the smoking of tobacco owes much of its destructive power to the fact that its lethal effects are not immediately discernible. Initial reactions of nausea and respiratory distress usually subside, and many persons continue smoking during several decades without apparent serious injury or death. And when serious illness does occur, it assumes such diverse forms—cancers of the mouth, larynx, bronchus, esophagus, pancreas, liver, kidney, bladder; leukemia; coronary heart disease, aneurysms, cerebral vascular disease, emphysema, and so forth—that few comprehend the common cause. Just as the complexity of the Warfarin death puzzle exceeds the intelligence of the rats that continue eating the poison, so the long latent interval and the complexity of the tobacco death puzzle make the dangers of tobacco seem abstract and therefore less real and ominous to the many smokers who begin smoking in youth and continue the practice until a mortal disease becomes evident decades later.

The magnitude of the hazard to life from tobacco is beyond the comprehension of almost everyone. Persons who begin smoking during adolescence and continue smoking 20 cigarettes daily will, on the average, lose about six years of expected lifetime—or, approximately 3 hours of life lost per package of cigarettes. Such persons are more likely than not to die of smoking. The 2 millionth death from lung cancer in the United States probably occurred during 1983 (75), which indicates that the total tobacco toll in the United States during this century now probably exceeds 10 million deaths.

The 485,000 deaths in 1980 attributed to cigarette smoking do not include deaths caused by the smoking of pipes and cigars, the passive inhalation of environmental tobacco smoke, and the chewing and snuffing of tobacco. Hence the total US tobacco toll that year was probably more than a half-million deaths. Currently tobacco is an environmental hazard equal to all other hazards to life combined, one deserving of our utmost preventive measures. Only the unquantifiable threat of nuclear annihilation poses a greater threat to human health and life.

Tragically, while trying to defend its own population from international sources of heroin, cocaine, and marihuana, the United States encourages and supports the export to many other countries of tobacco—a substance at least as destructive of health and life. There is urgent need for more effective action to protect the population of the developing world from tobacco. Ordinarily one would expect the World Health Organization to lead this action. But during recent years WHO has devoted less than 1/1,000th of its resources thereto—despite the fact that tobacco now kills approximately 2 million persons annually worldwide.

Alcohol has been a social problem for many centuries and will continue to require appropriate social action to limit its abuse. But because moderate use is compatible with good health and long life, it is neither practicable nor desirable to prohibit its use altogether. The US alcohol mortality pattern, however (Table 6), provides a basis for anticipating the kinds of problems with this substance that may accompany development in other countries.

Mortality from abuse of addictive substances other than tobacco and alcohol is exceedingly difficult to measure, but the estimate of 30,000 deaths in the United States during 1980 attributable thereto (Table 7) seems reasonable. Again, many of the deaths are linked not only to drug abuse but also to developmental circumstances such as urbanization and vehicular traffic. But the reader should be mindful that the fact that abuse of addictive substances other than tobacco and alcohol currently causes less than 2 percent of US mortality is a consequence of their illicit status, legal suppression, and the general nonavailability of these substances. If heroin, cocaine, and marihuana were legalized, it is highly likely that the number of users would greatly increase—perhaps to more than 50 million users of each substance in the United States; and mortality attributable to their use would increase during subsequent decades to many hundreds of thousands of deaths each year.

This analysis of US mortality from abuse of addictive substances—tobacco, alcohol, opiates, cocaine, hallucinogens, stimulants, and hypnotics—clearly indicates that addiction is currently the foremost preventable cause of precocious illness and death in this highly developed nation. Altogether, 630,000 deaths in 1980—nearly one-third of all deaths from all causes—are attributed to abuse of addictive substances: 25 percent to the smoking of tobacco, 5 percent to the drinking of alcohol, and 1–2 percent to the abuse of other addictive substances.

Such are the unfortunate byproducts for the United States of its pioneering role in development. Wise leaders in less developed countries should learn from this experience.

Note

This analysis, made while the author was with the National Institute on Drug Abuse, was presented at a Department of Health and Human Services Interagency Work Group, 14 March 1984.

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Excerpts from AMICUS CURIAE BRIEF FOR
ACTION ON SMOKING AND HEALTH in LAMAR OUTDOOR ADVERTISING v.
MISSISSIPPI STATE TAX COMMISSION, No. 82-4076 in the U.S.
Court of Appeals for the Fifth Circuit, filed June 2, 1982.
The case was eventually consolidated, and decided as *Dunagin v.
City of Oxford*, 718 F.2d 738 (5th Cir. 1983)

ARGUMENT

I. The Broad Police Powers of the States Over Potentially Bannable Products, Such as Alcohol and Tobacco, Includes the Power to Ban Advertising of these Products

ASH urges this Court to view this case from the perspective of the product sought to be advertised -- alcohol. Alcohol, like tobacco, must be considered in a special category of products. Both may generally be sold to and used by adults, although sale and/or use by young people are generally prohibited, and the places where these products can be sold are often restricted. In addition, both have substantial proven health risks, are addicting for at least some people, and pose real dangers to the public safety and welfare. Both are therefore bannable under the police power of the states. Indeed, but for historical reasons, both alcohol and tobacco would almost certainly be banned if they were new products seeking government approval today.

The States, with a number of exceptions, have generally decided not to totally ban alcohol or tobacco, but to legalize their use under significant restrictions and controls. This "compromise" reflects

ATTACHMENT V

the knowledge that alcohol and tobacco are serious health risks, and also reflects the fact that alcohol and tobacco are very widely ingrained in the habits of Americans. In fact, alcohol and tobacco are by far the two most widely used and abused "drugs" in this country, as indicated in the following chart:

DRUG USE IN THE UNITED STATES: 1979[2]

SUBSTANCE	EVER USED		CURRENT USERS	
	NUMBER	%	NUMBER	%
Alcohol	160,800,000	90%	108,600,000	61%
Tobacco	142,100,000	79%	62,400,000	36%
Marijuana	54,800,000	30%	22,600,000	13%
Cocaine	15,100,000	9%	4,400,000	2%
Heroin	2,600,000	1%	(not listed)	less than 1%

Substantial alcohol and tobacco use were found in all age groups tested in this survey:

ALCOHOL AND TOBACCO USE IN THE UNITED STATES: 1979[2]
(BY AGE GROUP)

age group	ALCOHOL		TOBACCO	
	EVER USED	CURRENT USE	EVER USED	CURRENT USE
12-17 yrs. old	16,400,000	8,700,000	12,600,000	2,800,000
18-25 yrs. old	30,400,000	24,300,000	26,500,000	13,800,000
25 + yrs. old	114,000,000	75,000,000	103,000,000	45,900,000

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[2] These figures are estimates developed from the National Survey on Drug Abuse: 1979. The Survey covers drug use by persons over 12 years of age. "Current use" is defined as use at least once in the thirty days prior to the survey.

There can be no dispute today that both alcohol and tobacco pose substantial health risks to the consumer, are addicting to at least some people, and create serious dangers to the public health, safety, and welfare. These dangers of alcohol were acknowledged by the plaintiffs below, in their Proposed Findings of Fact and Conclusions of Law, at pg. 21:

> The potential harmful and addictive qualities of alcoholic beverages in certain individuals is an unfortunate fact known to almost everyone .... The Court can take judicial notice of statistics of rising alcoholism and alcohol abuse.

The dangers of alcohol use were also discussed in the District Court testimony of Defendants' expert witness, Dr. Marc Hertzman, Director of Hospital Services at the George Washington University Medical Center. *See*, Slip Op., at pgs. 5-6. *See also*, the District Court's decision in *Dunagin*, *supra*, 489 F. Supp. at 771 fn. 11:

> It is a medically known fact that alcohol is dangerous to consumers because it causes alcoholism and death due to heart disease, cancer, cirrhosis of the liver, and accidents of various kinds.

The substantial relationship between drinking and automobile accidents has recently led to the creation of a new Presidential Commission on Drunk Driving, established last month by an Executive Order signed by President Reagan (April 14, 1982), to "aid the states in their fight against the epidemic of drunk driving on the nation's roads." It is estimated that drunk drivers were involved in approximately one-half of the 50,000 traffic fatalities last year, as well as the 750,000 traffic-related injuries. *The American Issue*, Jan. - March, 1982, at pg. 2.

Similarly, it is accepted today that use of tobacco poses substantial health risks to the consumer. This is well documented in the most recent report of the Surgeon General of the United States, The Health Consequences of Smoking (1982), where the current Surgeon General, Dr. Everett Koop, states (pg. xi):

> In July 1957, Dr. Leroy E. Burney issued the Public Health Service's first statement on cigarette smoking: it identified smoking as a cause of lung cancer. Each succeeding Surgeon General has had occasion to issue additional and stronger warnings. These have linked smoking with lung cancer, with heart disease, with chronic lung disease, with other cancers, and with increases in overall mortality.
>
> With this 1982 statement on cigarette smoking and cancer, I am joining my distinguished predecessors, Drs. Burney, Luther Terry, William Stewart, Jesse Steinfeld, and Julius Richmond. Cigarette smoking, as this Report again makes clear, is the chief, single, avoidable cause of death in our society and the most important public health issue of our time. (emphasis added).

The 1982 Surgeon General's report focuses primarily on the relationship between smoking and cancer. Summarizing current knowledge, the report states:

> Cigarette smoking is the major single cause of cancer mortality in the United States. Tobacco's contribution to all cancer deaths is estimated to be 30 percent. This means we can expect that 129,000 Americans will die of cancer this year because of the higher overall cancer death rates that exist among smokers as compared with nonsmokers.... There is no single action an individual can take to reduce the risk of cancer more effectively than quitting smoking, particularly cigarettes....
>
> Cigarette smoking is a major cause of cancers of the lung, larynx, oral cavity, and esophagus, and is a contributory factor for the development of cancers of the bladder, pancreas, and kidney....

> Lung cancer, first correlated with smoking over 50 years ago, is the single largest contributor to the total cancer death rate. Lung cancer alone accounts for fully 25 percent of all cancer deaths in this country; it is estimated that 85 percent of lung cancer cases are due to cigarette smoking. Overall, smokers are 10 times more likely to die from lung cancer than are nonsmokers. Heavy smokers are 15 to 25 times more at risk than nonsmokers.... The 5-year survival rate fro cancer of the lung is less than 10 percent. This rate has not changed in 20 years. Early diagnosis and treatment do not appreciably alter this dismal survival rate -- the best preventive measure a smoker can take to reduce the risk of lung cancer is to quit smoking, and for a nonsmoker, to not take up the habit. (pgs. V - VI).

The dangers of cigarette smoking have been acknowledged by the courts, see, e.g., Shimp v. New Jersey Bell Tel. Co., 145 N.J. Super. 516, 527, 368 A.2d 408, 414 (App. Div. 1976), where the Court took judicial notice of "the toxic nature of cigarette smoke and its well known association with emphysema, lung cancer and heart disease." Numerous state legislatures have also acknowledged the dangers of smoking in laws banning smoking in certain public areas. See, e.g., Ariz. Rev. Stat. Ann. § 36-601.01 (1974); Ark Stat. Ann. §§ 82-3701 to -3703 (Cum. Supp. 1979); Colo. Rev. Stat. §§ 25-14-101 to -105 (Cum. Supp. 1978); Minn. Stat. Ann. §§ 141.411-417 (West Supp. 1980); 1979 Mont. Laws ch. 368; Neb. Rev. Stat. §§ 71-5701 to -5713 (Supp. 1979); Nev. Rev. Stat. §§ 202.2490.2492 (1975); Okla. Stat. Ann. tit. 21. § 1247 (West Supp. 1979); R.I. Gen. Laws §§ 23-56-1, -2 (Cum. Supp. 1978).

The Surgeon General, in his 1979 report, stated that the health damage resulting from cigarette smoking cost the nation 27 billion dollars in medical care, absenteeism, decreased work productivity, and accidents. Id., at pg. vii. In fact, cigarette smoking is the "single most important preventable environmental factor contributing to illness, disability, and death in the United States." *Id.*

The dangers of alcohol and tobacco use are therefore well documented and accepted in this country. However, despite these proven dangers, the states have generally not banned alcohol and tobacco, but have allowed their legal use under severe restrictions and controls, including a ban on their use by minors and restrictions on advertising.[3]

Given these realities, it is clear that the States need flexibility to respond to the problems of alcohol and tobacco use. The broad police power of the States, which includes the power to totally ban these products, also includes by implication the power to adopt a lesser range of restrictions and controls, including a ban on their advertising.

We believe that the decision in this case flows directly from the closest case factually, where the U.S. Supreme Court upheld the federal ban on cigarette advertising in the electronic media. *Capital Broadcasting Company v. Mitchell*, 333 F. Supp. 582 (D.D.C. 1971) (three-judge Court), *summarily aff'd.*, 405 U.S. 1000 (1972).

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[3] It would be extremely difficult, if not impossible, to totally ban either alcohol or tobacco in this country today. Both are very ingrained in the habits of Americans, are very widely used, and are addicting for at least some people. In addition, large and powerful industries support these products. Alcohol and tobacco were around from the very beginning of this country, and have been considered an integral part of American life for many years. *See generally*, Consumers Union, *Licit and Illicit Drugs*, at pages 209-13 (1972).

Recent scientific and medical evidence has proven that both alcohol and tobacco are serious health problems, which justify greater governmental controls. *See, e.g.*, *Peiole v. Cook*, 34 N.Y. 2d 100, 104, 312 N.E. 2d 453, 456 (Ct. App. 1974), where the Court stated:

> [C]igarette tobacco is now recognized as a substance dangerous to public health and, as in the case of alcohol, this justifies greater legislative control. (emphasis added.)

Capital Broadcasting, like this case, involved a suit for declaratory and injunctive relief challenging the constitutionality of a ban on advertising a certain product. In *Capital Broadcasting*, six radio station companies and the National Association of Broadcasters challenged Section 6 of the Public Health Cigarette Smoking Act of 1969, Pub. L. 91-222, 15 U.S.C. § 1335, which provided:

> Sec. 6. After January 1, 1971, it shall be unlawful to advertise cigarettes on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.[4]

Plaintiffs in their suit requested and obtained a three-judge district court to hear the case, pursuant to the now repealed predecessor of 28 U.S.C. §§ 2282 and 2284.

Plaintiffs raised two principal issues: whether the advertising ban violated the First Amendment's right of Freedom of speech, and whether the ban constituted an invidious discrimination against the electronic media, in violation of the Fifth Amendment. The District Court's decision rejecting both of these arguments is equally applicable to the instant case. With respect to the First Amendment issue, the Court stated:

> Petitioners allege that the ban on advertising imposed by Section 6 prohibits the "dissemination of information with respect to a lawfully sold product * * *" in violation of the First Amendment. It is established that product advertising is less vigorously protected than other forms of speech. [citations omitted]....
>
> Whether the Act is viewed as an exercise of the Congress' supervisory role over the federal regulatory agencies or as an exercise of its power to regulate interstate commerce, *Congress has the power to prohibit the advertising of cigarettes in any media*. The validity of other, similar advertising regulations concerning the federal regulatory agencies has been repeatedly upheld whether the agency be the FCC, the FTC, or the SEC. 333 F. Supp. at 584 (emphasis added) (footnotes omitted).

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[4] The Public Health Cigarette Smoking Act of 1969 was amended in 1973 to exte[illegible] prohibition against advertisements to "little cigars" as well as [illegible]ces. Pub. L. 93-109.

Finally, the District Court rejected the radio stations' Equal Protection argument, ruling that a "rational basis" existed for banning cigarette ads on the electronic media (radio and television), but not in the print media. The Court focused on evidence of increased cigarette smoking, particularly among young children who were particularly susceptible to the subtle manipulation of advertising in the electronic media:

> In 1969 Congress had convincing evidence that the Labeling Act of 1965 had not materially reduced the incidence of cigarette smoking. Substantial evidence showed that the most persuasive advertising was being conducted on radio and television, and that these broadcasts were particularly effective in reaching a very large audience of young people. Thus, Congress knew of the close relationship between cigarette commercials broadcast on the electronic media and their potential influence on young people, and was no doubt aware that the younger the individual, the greater the reliance on the broadcast message rather than the written word. A pre-school or early elementary school age child can hear and understand a radio commercial or see, hear and understand a television commercial.... 333 F. Supp. at 385-86.

The District Court's decision in Capital Broadcasting was appealed to the U.S. Supreme Court by the petitioners in the District Court, pursuant to the now-repealed procedures of 28 U.S.C. §§ 2282 and 2284. The Supreme Court did not set the case down for full briefing and oral argument, but in a brief per curiam order summarily affirmed the decision of the District Court. 405 U.S. 1000 (1972).

There can be no doubt that the Supreme Court's per curiam decision was a decision, on the merits, upholding the constitutionality of the cigarette ad ban. As opposed to a denial of certiorari, a summary opinion by the Supreme Court is a ruling on the merits of the case, and establishes binding law on the lower courts. See, Hicks v. Miranda, 422 U.S. 332, 345 (1975); Illinois State Board of Elections v. Socialist Workers Party, 400 U.S. 173, 180-81 (1979); Mandel v. Bradley, 432 U.S. 173, 176 (1977).

ASH thus submits that the Capital Broadcasting decision is compelling authority for upholding the ban on alcohol advertising in this case.

Other Supreme Court decisions have recognized the broad authority of government over harmful products. See, Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 456 (1979):

> [T]he State does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity. Neither Virginia Pharmacy nor Bates purported to cast doubt on the permissibility of these kinds of commercial regulation.

In the recent case of Metromedia, Inc. v. Ritz of San Diego, _____ U.S. _____, 69 L. Ed. 2d 800, 816 (1981), the Court upheld the constitutionality of an ordinance banning billboards which carry commercial advertising, on the ground that "billboards are real and substantial hazards to traffic safety." See also, Packer Corp. v. Utah, 285 U.S. 105 (1931), where the Court upheld a state statute banning tobacco advertising on billboards, streetcar signs, and placards. Packer Corp. involved a statutory scheme very similar to the present Mississippi scheme for the regulation of alcohol. Originally, Utah had totally prohibited tobacco, but subsequently amended its law to allow the possession and sale of tobacco under strict regulation, including a ban on possession by and sale to minors, a requirement for licensing of all sellers, and a ban on intrastate advertising. Id., 285 U.S. at 108-09.

In Packer Corp., the Supreme Court concluded that Utah's advertising ban on tobacco products did not violate the Commerce Clause or deny equal protection. In language equally applicable to the instant case, the Court stressed the power of the states to protect their citizens, especially young children, from the effects of tobacco advertising:

> The State may, under the public power, regulate the business of selling tobacco products ... and the advertising connected therewith (citations omitted) ....
>
> Young people as well as adults have the message of the billboard thrust upon them by all the arts and devices that skill can produce. 258 U.S. at 108, 110.

ASH submits that the power to ban alcohol or cigarettes entirely, necessarily includes the power to ban alcohol or cigarette advertising, consistent with the First Amendment. This point has been made cogently as concerns liquor advertising, Lydick, "State Control of Liquor Advertising Under the United States Constitution", 12 Baylor L. Rev. 43, 43-45 (1960):

> The question of "freedom of speech," as it applies to the advertising of alcoholic beverages, seems to be remote. But it has been presented as a serious argument against the constitutionality of any federal statute prohibiting the advertising of alcoholic beverages in interstate commerce....
>
> If the states may absolutely prohibit the manufacture, transportation, sale and possession of intoxicants, it would seem logical that they may adopt regulations less stringent than total prohibition.

> If a state may absolutely prohibit all incidents of normal commerce when the subject of that commerce is liquor, or permit them in such degree as the state may deem wise, then it would seem that an argument against a statute prohibiting liquor advertising which is based on "freedom of speech" is built on quicksand. A state can forbid not only the importation of intoxicants but also their manufacture, sale, and possession. To then conclude that a state can do all those things but cannot prohibit the advertising of intoxicants is to assume an illogical possition.... Sales and advertising are so closely related...that it would seem difficult to believe that the U.S. Supreme Court would permit a state to prohibit the sale of liquor but deny it the right to prohibit liquor advertising on the ground of "freedom of speech."

The Supreme Court's decision in State Board of Equalization v. Young's Market Co., 299 U.S. 59 (1936), confirms this position. The Court held that the power to prohibit the importation, manufacture and sale of alcohol necessarily included the power to apply a less stringent regulation to reduce consumption of alcohol: "Surely the State may adopt a lesser degree of regulation than total prohibition."

Two authors have come to the same conclusions as to prohibiting cigarette ads. See, Note, Freedom of Expression in a Commercial Context, 78 Harv. L. Rev. 1191, 1195 (1965); Note, Cigarette Advertising and the Public Health, 6 Colum. J: L. & Soc. Prob. 99, 107 (1970). The ban on advertising to promote the public health is not only appropriate, but may be the most workable method of decreasing consumption of cigarettes and/or protecting young people from taking up the habit.

> The power granted the federal and state governments under the police power is said to be greatest when invoked to protect the public health. In light of the evidence showing cigarette smoking to be a health hazard, the police

> power is a proper means by which to decrease cigarette consumption. Although the most direct means of decreasing consumption would seem to be the outlawing of cigarettes, experience with the prohibition of alcoholic beverages under the eighteenth amendment, and examination of the physiological and psychological motivations for cigarette smoking suggest that a general prohibition would be unworkable. Id. (footnote omitted).

ASH submits that any suggestion that Congress or the States could not constitutionally restrict, condition, or ban the advertising of a lawfully sold product would take from the government one of the most effective -- and at the same time fairest and most efficient -- methods it has for dealing with a wide range of products with possible problems. These might include birth control pills, detergents with phosphates, cyclamates, etc.[5] Faced with a choice of either complete freedom or total ban, governments will naturally hesitate to act where the evidence is not yet conclusive, although it may already be strong or even compelling. Unfortunately, it is often true that the dangers of newly developed products may reveal themselves only after a significant length of time and diligent research, and for some period the evidence will be very suggestive but less than necessary to justify a total ban. Furthermore, by the time the dangers are adequately established, the use of such products may be so widespread and accepted that a product ban is impossible and/or would result in severe economic dislocations. The only alternative under this either-or assumption would be to ban the sale of a product until there was enough long-term evidence to guarantee its complete safety; again, a virtual economic and practical impossibility.

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[5] ASH's argument in this brief focuses only on alcohol and tobacco. Whether this argument should be applied to other dangerous products is a question this Court need not address at this time. It is clear that alcohol and tobacco are unique products in our society, which but for historical reasons would be banned if sought to be marketed as "new" products today. Alcohol and tobacco are distinguishable from other products in that they are proven health dangers, are addictive, and while generally legal for adults, they also have a strong attraction for children.

Some products involve "fundamental" constitutional interests, such as the use of contraceptives in the decision whether or not to beget a child. By contrast, there is no "fundamental" right to consume alcohol or smoke tobacco.

Thus cases such as Carey v. Population Services International, 431 U.S. 678 (1977), discussed at p. 20, infra, in which the Court declared unconstitutional a statute which prohibited the advertising or display of contraceptive devices, are clearly distinguishable.

To leave private enterprise free to develop and promote new products including drugs, food additives, and substances which may affect the environment, the Government must be able to make a graduated response to the danger as evidence against the product accumulates. This might include limitations on unsubstantiated claims, prescribed warning in some or all ads, a ban on ads in some media [e.g., publications directed to children; restricting advertising to medical journals, etc.], or a total ban on all advertising. Such a graduated approach would have the advantages, as it does in the instant case, of decreasing the magnitude of the problem with the least economic impact and consistent with freedom of choice by consumers. The either-or approach, which can do none of these things, can hardly be the only avenue left open by the Constitution to treat this growing variety of products with possible problems.

It is important to note that any decision striking down the Mississippi statute on the ground that alcohol (and by implication cigarette) advertising is entitled to substantial First Amendment protection would cast serious doubt on the ability of state and federal governments to adopt other forms of graduated response to dangerous products. For example, such a ruling would cast serious doubt on the power of government to require disclosures or warnings in ads, such as the tar and nicotine disclosures and health warnings which currently appear in cigarette ads. Such a ruling would also make it much more difficult for the government to restrict the form or content of advertising (as is the case of the "tombstone" format required for say financial ads), or to regulate ads directed toward children or to restrict ads to certain publications, such as medical journals.

For all these reasons, we believe that the broad police power of the States over potentially bannable products, such as alcohol and tobacco, includes the power to ban advertising of these products.

II. Alcohol and Cigarette Advertising, Although Perhaps Categorized as "Commercial Speech," are not Entitled to Protection Under the First Amendment

The United States Supreme Court has made clear in a number of recent decisions that the states possess the power to ban "commercial speech" which either relates to an illegal product or is inherently misleading or deceptive.

A. The States Can Ban Advertising Which Relates to an Illegal Product

order, we must find that the homestead issue was a "proceeding in bankruptcy" and that the order possesses "definitive operative finality." *Matter of Cross*, 666 F.2d 873, 877–878. We need not consider the former element, for we find the latter to be lacking. The district court's order is not a definitive disposition of the merits of the homestead issue. *Cf. In re Durensky*, 519 F.2d 1024, 1028–29 (5th Cir.1975) (district court's order remanding to bankruptcy court for decision on merits after rejecting jurisdictional challenge held to lack finality). *Accordingly*, we are without jurisdiction to hear this appeal.

APPEAL DISMISSED.

Kathy DUNAGIN, et al.,
Plaintiffs-Appellants,

v.

The CITY OF OXFORD, MISSISSIPPI,
et al., Defendants-Appellees,

The State of Mississippi,
Intervenor-Appellee.

LAMAR OUTDOOR ADVERTISING,
INC., et al., Plaintiffs-Appellees,

v.

MISSISSIPPI STATE TAX COMMISSION, et al., Defendants-Appellants.

Nos. 80-3762, 83-4076.

United States Court of Appeals,
Fifth Circuit.

Oct. 31, 1983.

Actions were brought against the Mississippi State Tax Commission, individual commissioners thereof, Commission's Alcoholic Beverage Control Division, and State Attorney General by outdoor advertising, newspaper, television and radio businesses that operate in Mississippi seeking declaratory judgments that Mississippi's intrastate liquor advertising ban unconstitutionally abridged their commercial speech rights and asking for an injunction against enforcement of ban. The United States District Courts for the Northern District of Mississippi and the Southern District of Mississippi, 539 F.Supp. 817, split on the issue. On rehearing, ordered at 701 F.2d 335, of panel opinion, 701 F.2d 314, the Court of Appeals, Reavley, Circuit Judge, held that Mississippi law which banned liquor advertising by local, in-state media is not in violation of First Amendment protection of commercial speech in view of existence of sufficient reason to believe that advertising and consumption are linked to justify ban, whether or not "concrete scientific evidence" exists to that effect.

Judgment of District Court for the Northern District of Mississippi affirmed, judgment of District Court for the Southern District of Mississippi, 539 F.Supp. 817, reversed.

Jerre S. Williams, Circuit Judge, specially concurred and filed an opinion in which Tate, Circuit Judge, joined.

Gee, Circuit Judge, dissented and filed an opinion in which Goldberg, Politz, Randall, and Patrick E. Higginbotham, Circuit Judges, joined.

Patrick E. Higginbotham, Circuit Judge, filed opinion concurring in dissenting opinion of Gee, Circuit Judge.

1. Constitutional Law ⟹90.1(1)
Intoxicating Liquors ⟹15

Mississippi law which banned liquor advertising by local, in-state media is not in violation of First Amendment protection of commercial speech in view of existence of sufficient reason to believe that advertising and consumption are linked to justify ban, whether or not "concrete scientific evidence" exists to that effect. Miss.Code 1972, §§ 67-1-37(e), 67-1-85.

2. Constitutional Law 🔑90.1(1)
Intoxicating Liquors 🔑15

Mississippi's ban on liquor advertising by local, in-state media was no broader than necessary to pursue its goal of preventing artificial stimulation and promotion of liquor sales and consumption, and, as such, did not violate First Amendment protection of commercial speech. U.S.C.A. Const. Amend. 1; Miss.Code 1972, §§ 67-1-37(e), 67-1-85.

3. Constitutional Law 🔑239(1)

Strict scrutiny standard of review was inappropriate to review of constitutionality of Mississippi's ban on liquor advertising by local, in-state media under the equal protection clause of the Fourteenth Amendment on mere assertion of violation of First Amendment rights where Mississippi law was ultimately found to be unconstitutional restriction of commercial speech. U.S.C.A. Const.Amends. 1, 14; Miss.Code 1972, §§ 67-1-37(e), 67-1-85.

4. Constitutional Law 🔑239(1)
Intoxicating Liquors 🔑15

Disadvantage to which economic interests of intrastate liquor advertisers were put by Mississippi law banning liquor advertising by local, in-state media compared with those of interstate media gave rise to an equal protection issue requiring only minimal scrutiny and, under such deferential scrutiny of economic regulation, challenged classification did not violate equal protection clause of the Fourteenth Amendment. U.S.C.A. Const.Amends. 1, 14; Miss. Code 1972, §§ 67-1-37(e), 67-1-85.

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Gary W. Gardenhire, Asst. Atty. Gen., Chief, Civ. Div., Oklahoma City, Okl., for State of Okl. in both cases.

F. Edwin Perry, Oxford, Miss., for City of Oxford, in No. 80-3762.

Bruce Silverglade, Washington, D.C., amicus curiae for Center for Science in the Public Interest.

Peter H. Meyers, John F. Banzhaf, III, Washington, D.C., amicus curiae for Accuracy and Action about Alcohol Addiction.

Appeal from the United States District Court for the Northern District of Mississippi.

Appeal from the United States District Court for the Southern District of Mississippi.

Before CLARK, Chief Judge, BROWN, GOLDBERG, GEE, REAVLEY, POLITZ, RANDALL, TATE, JOHNSON, WILLIAMS, GARWOOD, JOLLY and HIGGINBOTHAM, Circuit Judges.*

REAVLEY, Circuit Judge:

Mississippi is one of several states which significantly restrict liquor advertising by the local media.[1] Two suits were filed attacking, principally on First Amendment grounds, the Mississippi law. The District Courts for the Northern and Southern Dis-

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* Judge Alvin B. Rubin recused himself and did not participate in this decision.

[1] *See* Fla.Stat.Ann. § 561.42(10)-(12) (West Supp.1983); Mass.Gen.Laws Ann. ch. 138, § 24 (West 1974); Utah Code Ann. §§ 32-7-26 to 28 (1953 & Supp.1981); Okla. Const. art. XXVII, § 5 and Okla.Stat.Ann. tit. 37, § 516 (West Supp.1982).

ATTACHMENT VI

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tricts of Mississippi reached opposite judgments in those cases. *Dunagin v. City of Oxford,* 489 F.Supp. 763 (N.D.Miss.1980) (upholding); *Lamar Outdoor Advertising, Inc. v. Mississippi State Tax Commission,* 539 F.Supp. 817 (S.D.Miss.1982) (invalidating).[2] We uphold the constitutionality of the Mississippi law.

I. The Mississippi Law

Until 1966 the possession and sale of alcohol were banned in Mississippi. The state then accepted the impossibility of enforcement of total prohibition and enacted a local option law, allowing each county or judicial district therein to vote an end to the prohibition that otherwise continues throughout the state. Miss.Code Ann. §§ 67-1-1 *et seq.* (1973). Mississippi did not drop its objection to intoxicants by enacting the 1966 law; it reannounced the state policy of prohibition while allowing local exceptions under strict regulation:

> The policy of this state is reannounced in favor of prohibition of the manufacture, sale, distribution, possession and transportation of intoxicating liquor .... The purpose and intent of this chapter is to vigorously enforce the prohibition laws throughout the state, except in those counties voting themselves out from under the prohibition law in accordance with the provisions of this chapter, and, in those counties, to require strict regulation and supervision of the manufacture, sale, distribution, possession and transportation of intoxicating liquor....

Id. § 67-1-3. At the time of trial in *Lamar Outdoor Advertising,* thirty-five counties and four judicial districts remained "dry," while forty-three counties and four judicial districts had voted to legalize liquor. The wet and dry counties are spread across the state in a checkerboard pattern, with the majority of the population residing in wet counties.

Pursuant to its rulemaking authority granted by the local option law, *id.* § 67-1-37(e), the Mississippi State Tax Commission promulgated Regulation No. 6, which prohibits most advertisements that "originate" within the state.[3] The plaintiffs challenged

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[2] A panel of this court heard the consolidated appeal and decided the law was unconstitutional. Before delivery of that opinion, however, the 10th Circuit upheld the Oklahoma law in *Oklahoma Telecasters Ass'n v. Crisp,* 699 F.2d 490 (10th Cir.1983), *cert. granted sub nom. Capital City Cables, Inc. v. Crisp,* — U.S. —, 104 S.Ct. 66, 78 L.Ed.2d 81 (1983). Under the procedure of this circuit governing when a panel proposes to issue a decision that initiates a conflict with another circuit, the proposed opinion was first circulated to all active judges of this court. An en banc poll was requested, and the case was voted en banc. The panel opinion was then published, though vacated: 701 F.2d 314, 335.

[3] The regulation provides:

> No person, firm or corporation shall originate advertisement in this State, dealing with alcoholic beverages by any means whatsoever, including but not limited to newspapers, radio, television, circular, dodger, word of mouth, signs, billboards, displays or any other advertising media, except as follows:
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> (1) On the front of any licensed retail package store building, and no higher than the top of the roof of the permitted place of business at its highest point, there may be printed without illumination, in letters not more than eight (8) inches high, the name of the business, the permit number thereof, which may be preceded by the words "A.B.C. Permit No. ______", and the words "Package Liquor Sold Here". Where the package retail store is located in a building of more than one story in height, the top of such sign shall not be higher than the top of the first story.
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> (2) A package retail permittee may advertise merchandise inside the permitted place of business by means of a display or displays, signs or placards, or notices, without special illumination. No displays, signs, placards or notices will be permitted in windows. No displays, signs, placards, notices, shelves, counters, or other fixtures shall be constructed or arranged in such a manner as to attract attention from outside the building.
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> (3) The holder of an on-premises retailer's permit may use the word "lounge", or other similar words descriptive of the facilities available at the permittee's principal place of business, in letters not more than eight (8) inches high and without special illumination, on signs located on the permittee's premises. The use of the word "lounge", but no other words of a similar nature, will be permitted on billboards in letters not more than eight (8) inches high.
>
> (4) In other advertising media, an on-premises permittee may use the word "lounge", but no other words of a similar nature, including, specifically, but not limited to "cocktails", "bar", and "happy hour". The word

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this regulation, as well as Miss.Code Ann. § 67-1-85 (1973) which prohibits most forms of liquor sign advertising as well.[4]

The combined effect of Regulation No. 6 and section 67-1-85 is that there are no billboards advertising hard liquor or wine in Mississippi. Local newspapers printed and distributed within the state are similarly restricted. Radio and television stations operating within the state cannot carry wine commercials, and must delete such advertisements from incoming network programming.

There are some exceptions to this ban upon the advertising of alcoholic beverages. Beer advertisements are generally allowed in all media.[5] A retail package store is allowed under Regulation No. 6 to erect on-site signs with the message "Package Liquor Sold Here" along with its permit number, and may advertise inside the premises. Bars and restaurants can use the word "lounge" on signs and in other media. The state has interpreted its law to mean that advertisements must originate within the state to be subject to its regulation. Hence, television and radio stations in other states broadcast liquor commercials that reach in-state viewers and listeners. Newspapers and magazines containing liquor advertisements from other states are mailed into the state, and newsstands in Mississippi are allowed to sell such publications. The state has even taken the position that a publication printed in Mississippi but mailed for distribution in Mississippi from another state is not subject to regulation. The state has also interpreted federal regulations to prohibit it from interrupting or deleting wine commercials in cable television transmissions sent from outside the state. *See* 47 C.F.R. § 76.55 (1982).

II. The First Amendment and Liquor Regulation

Those challenging the advertising ban argue primarily that it violates the First Amendment. They contend that this ad-

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"lounge" must be subordinated by restaurants to advertising placed for the other facilities offered at the place of business.

(5) All advertising not specifically permitted by statute or regulation is prohibited. Advertising of any type whatsoever about which a permittee may be in doubt should be submitted to the State Tax Commission for approval.

[4] The statute provided:

> No holder of a package retailer's permit shall have any sign, lighted or otherwise, or printing upon the outside of the premises covered by his permit advertising, announcing or advising of the sale of alcoholic beverages in or on said premises. However, on the front of said premises there may be printed, in letters not more than eight (8) inches high, the name of the business, the permit number thereof, which may be preceded by the words "A.B.C. Permit No." and the words "Package Liquors Sold Here." In addition, no alcoholic beverages, price list or promotional matter shall be kept, stored or displayed in the windows or other openings of said premises. An open window space or spaces not exceeding sixty square feet in area in the aggregate, and an open space of not exceeding twenty square feet in a front door, may be left open to view. The commission shall have the power and authority to adopt and enforce reasonable rules and regulations to compel compliance with the provisions of this section.
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> It shall be unlawful to advertise alcoholic beverages by means of signs, billboards, or displays on or along any road, highway, street, or building.
>
> This section shall not be construed so as to prohibit the commission from promulgating rules and regulations permitting the holder of an on-premises retailer's permit to include in signs located on the holder's premises and in advertisements of the holder's principal business, the word "lounge" or other similar words descriptive of the facilities available at such principal place of business, without referring specifically to alcoholic beverages.

Another statute banning liquor advertisements, Miss.Code Ann. § 97-31-1 (1972), is limited in scope to the provisions of the 1966 local option law, as explained in the panel opinion. 701 F.2d at 317.

[5] As the district court in *Dunagin* explained, section 97-31-1 was amended in 1934 to allow such advertisements. 489 F.Supp. at 767 n. 4. While only light beer and wines of less than four percent alcohol by weight are expressly exempted from regulation, *see* sections 67-1-5(a), 67-3-5, the record indicates that brand name beer is generally advertised in Mississippi. Native wines can also now be advertised on billboards, except as to price, under an express exception in section 67-1-85. This exception became effective in July 1982, after the district court decisions in this case, and does not color our analysis today.

vertising falls within that limited protection afforded pure commercial speech which does "no more than propose a commercial transaction," *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 762, 96 S.Ct. 1817, 1825, 48 L.Ed.2d 346 (1976) and which is "related solely to the economic interests of the speaker and its audience," *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 561, 100 S.Ct. 2343, 2348, 65 L.Ed.2d 341 (1980).[6]

A. The Scope of Commercial Speech Protection

While we need not so hold, there may be no First Amendment protection of purely commercial advertising of those products which the state could entirely proscribe.[7] Or, if by virtue of its police power the state may prohibit or severely limit a trade or conduct (e.g., prostitution, hand-guns, explosive devices, marijuana, pipes and paraphernalia designed to be used with illegal drugs), the state may be entitled to allow the trade but restrict the advertising without having to justify the restriction by balancing the state interest against the public interest in the commercial speech. The Court has not expressly excepted this category of advertising from commercial speech protection. It has excluded advertising of illegal activity from the protection. *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations*, 413 U.S. 376, 388–389, 93 S.Ct. 2553, 2560, 37 L.Ed.2d 669 (1973). And restrictions on false, deceptive, and misleading commercial speech are permissible. *Friedman v. Rogers*, 440 U.S. 1, 9, 99 S.Ct. 887, 893, 59 L.Ed.2d 100 (1979). Thus far, the Court has written to place commercial speech under protection where "it at least concern[s] lawful activity and [is] not . . . misleading." *Central Hudson Gas*, 447 U.S. at 566, 100 S.Ct. at 2351.

The Court may or may not choose to exclude from protection the truthful advertising of lawful trades or activities which the state has so great an interest in abating that they are subject to prohibition. It probably makes no difference, however, whether this category of advertising is treated as outside of commercial speech protection or whether the *Central Hudson Gas* four-part test, discussed below, is applied, because cases of this category likely present state interests which justify advertising restrictions that pass the latter test as a matter of law.

The state argues that liquor advertising is excluded from protection by the previous opinions of the Supreme Court because that advertising does promote illegal activity and is inherently misleading. We do not agree with these contentions.

The illegality argument is based on the fact that nearly half of the counties in the state are dry, and the fact that even in the wet counties, the manufacture, sale and distribution of liquor are only legal in limited areas—municipalities, qualified resort areas and clubs, Miss.Code Ann. § 67-1-7 (1973)—and even consumption is banned in certain areas of wet counties, such as public schools and colleges, *id.* § 67-1-37(g). The state reasons that liquor advertising would therefore necessarily relate to unlawful activity. The district court in *Dunigan* agreed:

> The Local Option Law does not expressly forbid the advertising of alcoholic beverages in "dry" areas, but it is beyond peradventure that such advertising must contribute to and encourage violation of the statute. This is true whether or not the newspaper is circulated only in a "dry" county because advertisement of liquor is apt to encourage consumers in "dry" counties to violate the law by purchasing liquor in "wet" counties for

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[6] For a thoughtful discussion of the commercial speech doctrine, see Jackson & Jeffries, *Commercial Speech: Economic Due Process and the First Amendment*, 65 Va.L.Rev. 1 (1979).

[7] Justice Blackmun, however, has stated that "I seriously doubt whether suppression of information concerning the availability and price of a legally offered product is ever a permissible way for the State to 'dampen' demand for or use of the product." *Central Hudson Gas*, *supra*, 447 U.S. at 574, 100 S.Ct. at 2355 (concurring).

> transportation home. This factor is exacerbated in the case of *The Daily Mississippian* because its principal readers are University students, particularly mobile citizens who come to Oxford from all sections of Mississippi to attend school. Some students doubtless purchase liquor in Oxford to take with them when they return home or visit with friends or relatives in "dry" counties.
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> Because liquor advertising promotes activity illegal in a substantial portion of Mississippi, we hold that the State may regulate *The Daily Mississippian's* advertising of it even to the point of an absolute ban.

489 F.Supp. at 771.

If Mississippi cannot prohibit advertising because of the general effect upon liquor consumption, the state will not be entitled to prohibit advertising simply because it might stimulate the thirst of a consumer to the point where he elects to violate the local option law. The Mississippi laws under attack prohibit the advertisement of what may be done lawfully in Mississippi; those laws do not forbid the advertiser's promotion of violation of Mississippi law. The commercial speech doctrine would disappear if its protection ceased whenever the advertised product might be used illegally. Peanut butter advertising cannot be banned just because someone might someday throw a jar at the presidential motorcade.

The state then argues that liquor advertising is not protected because it is misleading: falsely identifying alcohol with "the good life" instead of disclosing the personal and social disasters it threatens, and particularly affecting the young and unsophisticated children in the public audience.

Again, if Mississippi cannot prohibit this advertising because of the strength of the state interest against liquor consumption, the state will have little success in preventing the advertising merely because it fails to tell the whole truth about its product. Nearly all advertising associates the promoted product with a positive or alluring lifestyle or famous or beautiful people. Our policy is to leave it to the public to cope for themselves with Madison Avenue panache and hard sells. A central teaching of the commercial speech doctrine was summed up in *Central Hudson Gas:*

> In applying the First Amendment to this area, we have rejected the "highly paternalistic" view that government has complete power to suppress or regulate commercial speech. "[P]eople will perceive their own best interests if only they are well enough informed, and . . . the best means to that end is to open the channels of communication rather than to close them . . . ." Even when advertising communicates only an incomplete version of the relevant facts, the First Amendment presumes that some accurate information is better than no information at all.

447 U.S. at 562, 100 S.Ct. at 2349 (citations omitted).

As for the argument that the advertising will reach young children, "the government may not 'reduce the adult population . . . to reading only what is fit for children.'" *Bolger v. Youngs Drug Products Corp.*, — U.S. —, —, 103 S.Ct. 2875, 2884, 77 L.Ed.2d 469 (1983) (quoting *Butler v. Michigan*, 352 U.S. 380, 383, 77 S.Ct. 524, 525, 1 L.Ed.2d 412 (1957)).

B. The Twenty-first Amendment

If there is any instance where a state can escape First Amendment constraint while prohibiting truthful advertising promoting lawful sales, it would be where the product being sold is intoxicating liquor. Section two of the Twenty-first Amendment states:

> The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

This clause serves primarily to create an exception to the normal operation of the Commerce Clause. *Craig v. Boren*, 429 U.S. 190, 206, 97 S.Ct. 451, 461, 50 L.Ed.2d 397 (1976). Its effect goes much further and is very significant to the case before us.

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In *Castlewood International Corp. v. Simon*, 596 F.2d 638, 642 (5th Cir.1979), *vacated and remanded*, 446 U.S. 949, 100 S.Ct. 2914, 64 L.Ed.2d 806 (1980), *panel opinion reinstated*, 626 F.2d 1200 (5th Cir.1980), we explained that section two of the Twenty-first Amendment:

> is unique in the constitutional scheme in that it represents the only express grant of power to the states, thereby creating a fundamental restructuring of the constitutional scheme as it relates to one product—intoxicating liquors. *See California v. LaRue*, 409 U.S. 109, 115, 93 S.Ct. 390 [395], 34 L.Ed.2d 342 (1972).

There can be no doubt that this was the desire of those who framed the Twenty-first Amendment. As originally proposed, the Amendment contained three substantive sections, the third of which provided:

> Congress shall have concurrent power to regulate or prohibit the sale of intoxicating liquors to be drunk on the premises where sold.

76 Cong.Rec. 4138 (1933). Section Three was deleted because of Congressional concern that its grant of concurrent power to regulate liquor to Congress would be construed to support the supremacy of federal regulation of liquor sales. As Senator Wagner pointed out, "We have expelled the system of national control through the front door . . . and readmitted it forthwith through the back door of Section 3." 76 Cong.Rec. 4145 (1933). This would have been the "ironical result of an amendment designed to restore to the states control of their liquor problem." *Id.* With these concerns in mind, Section Three was deleted in the final version of the amendment.

Thus, any analysis of the validity of a state statute regulating liquor does not proceed via the traditional route for testing the constitutionality of state statutes. We must proceed from a vantage point of presumed state power and then ask whether there are any limitations to that power, always keeping in mind that where intoxicating liquors are concerned, great deference must be accorded a comprehensive state regulatory scheme.

Clearly, state liquor laws are not immune from constitutional scrutiny. The Supreme Court has struck down such laws found in violation of the Establishment Clause, *Larkin v. Grendel's Den, Inc.*, — U.S. —, 103 S.Ct. 505, 74 L.Ed.2d 297 (1982), federal antitrust laws passed under the Commerce Clause, *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 100 S.Ct. 937, 63 L.Ed.2d 233 (1980), the Equal Protection Clause of the Fourteenth Amendment, *Craig v. Boren, supra*, federal procedural due process requirements, *Wisconsin v. Constantineau*, 400 U.S. 433, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971), and the Export-Import Clause, *Department of Revenue v. James B. Beam Distilling Co.*, 377 U.S. 341, 84 S.Ct. 1247, 12 L.Ed.2d 362 (1964). Nevertheless, the Supreme Court has twice, in examining the interface of the First and Twenty-first Amendments, given an unusual amount of deference to state liquor regulations.

In *California v. LaRue*, 409 U.S. 109, 93 S.Ct. 390, 34 L.Ed.2d 342 (1972), the plaintiffs challenged a California regulation banning nudity, and live performances, films and pictures depicting certain actual and simulated sexual acts, in nightclubs and bars where alcoholic beverages were sold. The Supreme Court did "not disagree with the District Court's determination that these regulations on their face would proscribe some forms of visual presentation that would not be found obscene" under *Roth v. United States*, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957) and later cases. 409 U.S. at 116, 93 S.Ct. at 395. The Court held, however, that the normal analyses of obscenity under *Roth* and communicative conduct under *United States v. O'Brien*, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968) did not apply because of the added consideration of the Twenty-first Amendment. It found that "the broad sweep of the Twenty-first Amendment has been recognized as conferring *something more* than the normal state authority over public health, welfare, and morals," 409 U.S. at 114, 93 S.Ct. at 396, and that "the case for upholding state regulation in the area of the Twenty-first Amendment is *undoubtedly strengthened* by that enactment," *id.* at 115, 93 S.Ct. at 395 (emphasis added). The Court found that the state's conclusions as to the need for the regulations were not "irrational," or "unreasonable," and that "wide latitude as to the choice of means to accomplish a permissible end must be accorded the state agency that is itself the repository of the State's power under the Twenty-first Amendment." *Id.* at 116, 93 S.Ct. at 395. The opinion of the Court concludes with the following passage:

> The Department's conclusion, embodied in these regulations, that certain sexual performances and the dispensation of liquor by the drink ought not to occur at premises that have licenses was not an irrational one. Given the added presumption in favor of the validity of the state regulation in this area that the Twenty-first Amendment requires, we cannot hold that the regulations on their face violate the Federal Constitution.

Id. at 118–19, 93 S.Ct. at 397.

In *New York State Liquor Authority v. Bellanca*, 452 U.S. 714, 101 S.Ct. 2599, 69 L.Ed.2d 357 (1981), the Court upheld a state ban on topless dancing in liquor establishments. Notably, *Bellanca* was decided after *Central Hudson Gas* and *Craig v. Boren.* Despite arguments that the acts in question did not partake of gross sexuality as in *LaRue* and that there was "no legislative finding that topless dancing poses anywhere near the problem posed by acts of 'gross sexuality,'" 452 U.S. at 717, 101 S.Ct. at 2601, the Court upheld the regulation, concluding that:

> [T]he elected representatives of the State of New York have chosen to avoid the disturbances associated with mixing alcohol and nude dancing by means of a reasonable restriction upon establishments which sell liquor for on-premises consumption. Given the "added presumption in favor of the validity of the state regulation" conferred by the Twenty-first Amendment, *California v. LaRue*, 409 U.S., at 118, 93 S.Ct., at 397, we cannot agree with the New York Court of Appeals that the statute violates the United States Constitution. Whatever artistic or communicative value may attach to topless dancing is overcome by the State's exercise of its broad powers arising under the Twenty-first Amendment. Although some may quarrel with the wisdom of such legislation and may consider topless dancing a harmless diversion, the Twenty-first Amendment makes that a policy judgment for the state legislature, not the courts.

Id. at 718, 101 S.Ct. at 2601.

The test applied in *LaRue* and *Bellanca* is less strict than that applied in *Central Hudson Gas.* First, the former test employs a rational basis scrutiny, requiring only a reasonable or rational means of reaching a permissible end, as opposed to a higher level of scrutiny imposed by the latter test. Second, *LaRue* and *Bellanca* employ a presumption in favor of validity, while ordinarily the burden is on the party defending a restriction on speech, even in a commercial speech case. *See Bolger v. Youngs Drug Products Corp.,* — U.S. —, — n. 20, 103 S.Ct. 2875, 2882 n. 20, 77 L.Ed.2d 469 (1983). *LaRue* and *Bellanca* are cases where fully protected speech was constitutionally restricted because the restriction was incidental to the rational regulation of liquor. It may follow that because any restriction on the advertisement of liquor itself is necessarily related, rationally and directly, to liquor regulation, restrictions placed upon that advertisement by the states are consistent with the First Amendment.

C. *Queensgate* and *Capital Broadcasting*

The state argues that two rulings by the Supreme Court have precedential effect here. The first is *Queensgate Investment Co. v. Liquor Control Commission,* 69 Ohio St.2d 361, 433 N.E.2d 138, *appeal dismissed,* — U.S. —, 103 S.Ct. 31, 74 L.Ed.2d 45 (1982). That case involved a First Amendment challenge to an Ohio regulation that generally permitted liquor advertising, but required that liquor permit holders "not

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advertise the price per bottle or drink of any alcoholic beverage, or in any manner refer to price or price advantage except within their premises and in a manner not visible from the outside of said premises." 433 N.E.2d at 139 n. 1. The regulation was upheld by the Ohio Supreme Court, and an appeal was taken to the United States Supreme Court, the jurisdictional statement questioning whether the regulation violated the First Amendment. Mississippi argues that the summary dismissal for want of a substantial federal question by the Supreme Court in *Queensgate* binds us in this case.

The Supreme Court has declared that while summary dispositions of appeals are decisions on the merits that bind lower federal courts, such decisions extend only to "the precise issues presented and necessarily decided by those actions." *Mandel v. Bradley*, 432 U.S. 173, 176, 97 S.Ct. 2238, 2240, 53 L.Ed.2d 199 (1977). *Queensgate* did not involve the precise issues presented here, since the Ohio regulation was more narrowly drawn than the Mississippi regulation. The Ohio statute only banned certain price advertisements and might be viewed as a "time, place and manner" restriction, unlike the Mississippi regulation.

Nevertheless, we agree with the Tenth Circuit, which when recently examining Oklahoma's liquor advertising ban, noted that "*Queensgate* manifestly presented an issue concerning the tension between the First and Twenty-first Amendments." *Oklahoma Telecasters Ass'n v. Crisp*, 699 F.2d 490, 497 (10th Cir.1983), *cert. granted sub nom. Capital Cities Cable, Inc. v. Crisp*, — U.S. —, 104 S.Ct. 66, 78 L.Ed.2d 81 (1983). We also agree with the state that the price advertising at issue in *Queensgate* lies near the center of the commercial speech doctrine and is probably as likely to deserve commercial speech protection as the "lifestyle" advertisements that the state alleges the plaintiffs in this case are interested in displaying. *See Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977) (upholding lawyer price advertising); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 761, 96 S.Ct. 1817, 1825, 48 L.Ed.2d 346 (1976) (upholding drug prescription price advertising and noting that "[t]he 'idea' he wishes to communicate is simply this: 'I will sell you the X prescription drug at the Y price.' ")

We take a middle road on this issue, following the approach taken in *Crisp, supra*, and *Plante v. Gonzalez*, 575 F.2d 1119 (5th Cir.1978), *cert. denied*, 439 U.S. 1129, 99 S.Ct. 1047, 59 L.Ed.2d 90 (1979). While the summary dismissal by the Supreme Court in *Queensgate* must "caution us" against finding the Mississippi regulations unconstitutional, *Plante*, 575 F.2d at 1125–26, we nevertheless are not relieved of our duty "to undertake an independent examination of the merits." *Mandel v. Bradley, supra*, 432 U.S. at 177, 97 S.Ct. at 2241.

The state and amicus parties also argue that the Supreme Court's summary affirmance in *Capital Broadcasting Co. v. Mitchell*, 333 F.Supp. 582 (D.D.C.1971) (three-judge court), *aff'd mem.*, 405 U.S. 1000, 92 S.Ct. 1289, 31 L.Ed.2d 472 (1972), operates as compelling authority in this case. The decision, upholding a federal ban on broadcasting of cigarette commercials, is of limited precedential value for two reasons. First, *Capital Broadcasting* antedated the emergence of the commercial speech doctrine in the mid-1970's, and was based on the view that commercial speech was completely outside the protection of the First Amendment. Second, the Supreme Court has itself expressly limited *Capital Broadcasting* to "the special problems of the electronic broadcast media," *Virginia Board of Pharmacy, supra*, 425 U.S. at 773, 96 S.Ct. at 1831, that make that form of communication " 'especially subject to regulation in the public interest,' " *Bigelow v. Virginia*, 421 U.S. 809, 825 n. 10, 95 S.Ct. 2222, 2234 n. 10, 44 L.Ed.2d 600 (quoting *Capital Broadcasting*, 333 F.Supp. at 584).

III. The *Central Hudson Gas* Test

We base our decision, ultimately, upon the application of the Supreme Court's analysis in *Central Hudson Gas & Electric*

Corp. v. Public Service Commission of New York, 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980):

> In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

Id. at 566, 100 S.Ct. at 2351.

In *Bolger v. Youngs Drug Products Corp.*, — U.S. —, 103 S.Ct. 2875, 77 L.Ed.2d 469 (1983), the latest Supreme Court commercial speech case at this writing, the Court reaffirmed the *Central Hudson Gas* test as the basic method of deciding commercial speech cases.

A. Parts One and Two: Protected Speech and State Interest

We assume, following the discussion above, that liquor advertising in Mississippi should be treated at the outset as protected commercial speech. There can be no question, on the next step, that Mississippi does assert a substantial interest, which the state describes to be "safeguarding the health, safety and general welfare of its citizens by controlling the artificial stimulation of liquor sales and consumption created by the advertising of liquor." Whatever the medicinal or social value for those who use alcohol moderately, alcohol abuse takes an enormous toll from society and the lives of many people. Testimony in *Lamar Outdoor Advertising* concentrated on the role alcohol plays in coronary heart disease, gastrointestinal cancer, cirrhosis of the liver, traffic accidents, and occupational and family problems. The court in *Dunagin* took judicial notice of these problems. 489 F.Supp. at 771 n. 11.

B. Part Three: Direct Advancement of The State Interest

The dispute begins with the third part of the *Central Hudson Gas* test. Does Mississippi's restriction against advertising directly advance the asserted state interest? In *Dunagin*, the trial judge, relying on the expert affidavit presented or his own knowledge and common sense, concluded in a summary judgment that "[t]he purpose of advertising alcoholic beverages is to promote consumption and thereby stimulate sales of alcoholic beverages. Increased sales of these beverages are highly correlated with increased problems associated with their use." 489 F.Supp. at 771 n. 11.

Other courts facing similar fact situations have reached the same conclusion—that advertising and consumption are directly linked. In *Queensgate Investment Co. v. Liquor Control Commission*, 69 Ohio St.2d 361, 433 N.E.2d 138, 142, *appeal dismissed*, — U.S. —, 103 S.Ct. 31, 74 L.Ed.2d 45 (1982), the Ohio Supreme Court found that "[t]he advertising of drink prices and price advantages would encourage and stimulate excessive consumption of alcoholic beverages; and advertising prohibition aids the interest in preventing that consumption." In *Oklahoma Telecasters Ass'n v. Crisp*, 699 F.2d 490, 501 (10th Cir.1983), *cert. granted sub nom. Capital Cities Cable, Inc. v. Crisp*, — U.S. —, 104 S.Ct. 66, 78 L.Ed.2d 81 (1983) the Tenth Circuit found it not "constitutionally unreasonable for the State of Oklahoma to believe that advertising will not only increase sales of particular brands of alcoholic beverages but also alcoholic beverages generally." *See also Williams v. Spencer*, 622 F.2d 1200, 1205 (4th Cir.1980) (agreeing with trial court's judicial notice that "an advertisement encouraging the use of drugs encourages actions which in fact endanger the health or safety of students"); *Capital Broadcasting v. Mitchell*, 333 F.Supp. 582, 586 (D.D.C.1971) (three-judge court), *aff'd mem.*, 405 U.S. 1000, 92 S.Ct. 1289, 31 L.Ed.2d 472 (1972) (noting "close relationship between cigarette commercials broadcast on the electronic media and their potential influence on young people").

The trial judge in *Lamar Outdoor Advertising* heard testimony from experts on the issue. The advertisers' expert, a professor of sociology who has specialized in alcoholism, testified that advertising only affected brand loyalty and market share, rather than increasing overall consumption or consumption of individual consumers. The state's expert, a medical doctor and professor of psychiatry who has done research in alcoholism, testified that there was "a strong correlation between an increase in alcohol advertising and consumption." 589 F.Supp. at 821. The trial court found that "[d]efendants failed to produce concrete scientific evidence to substantiate their position that alcohol advertising artificially stimulates consumption thereof," and concluded that Mississippi's regulation of advertising "does little to directly advance the government's interest in promoting temperance." *Id.* at 829.[8]

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[8] The degree to which an appellate court should defer to the "fact" findings of a trial judge as to the latest truths in the social sciences is an interesting question. The argument can be made that as long as the trial court applied the right legal test or the appropriate level of scrutiny, his findings under each prong of the test, here the *Central Hudson Gas* test, and his decision should be upheld on appeal. The *Lamar Outdoor Advertising* court's finding that advertising restrictions do not directly advance the state's interests since there is no scientifically concrete link between advertising and alcohol consumption sounds very much like a finding of fact. Should this finding be subject only to a clearly erroneous standard of review? Clearly not.

In the first place, the issue of whether there is a correlation between advertising and consumption is a legislative and not an adjudicative fact question. It is not a question specifically related to this one case or controversy; it is a question of social factors and happenings which may submit to some partial empirical solution but is likely to remain subject to opinion and reasoning. *See* Fed.R.Evid. 201 advisory committee note. That reasoning is the responsibility of legislators and judges, assisted by scholars as well as social scientists. The specific issue here was undoubtedly considered by the Mississippi Legislature when local option and the curtailment of liquor consumption were being studied. Now the issue has moved to the judicial stage. If the legislative decision is not binding at this stage, at least it carries great weight. Certainly it cannot be thrust aside by two experts and a judicial trier of fact.

The writings and studies of social science experts on legislative facts are often considered and cited by the Supreme Court with or without introduction into the record or even consideration by the trial court. *E.g., Barefoot v. Estelle*, — U.S. —, — n. 7, 103 S.Ct. 3383, 3397 n. 7, 77 L.Ed.2d 1090 (1983) (validity of predictions of violent behavior); *New York v. Ferber*, 458 U.S. 747, — n. 9, 102 S.Ct. 3348, 3355 n. 9, 73 L.Ed.2d 1113 (1982) (the effect upon the child used as a subject for pornographic materials); *Ballew v. Georgia*, 435 U.S. 223, 231 n. 10, 233 n. 11, 98 S.Ct. 1029, 1034 n. 10, 1035 n. 11, 55 L.Ed.2d 234 (1978) (effect of the size of jury upon deliberation and verdict); *Gregg v. Georgia*, 428 U.S. 153, 184 n. 31, 96 S.Ct. 2909, 2930 n. 31, 49 L.Ed.2d 859 (1976) (the deterrent effect of capital punishment); *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 58 n. 8, 93 S.Ct. 2628, 2635 n. 8, 37 L.Ed.2d 446 (1973) (the relation between obscenity and socially deleterious behavior); *Brown v. Board of Education of Topeka*, 347 U.S. 483, 494 n. 11, 74 S.Ct. 686, 692 n. 11, 98 L.Ed. 873 (1954) (the effect of segregation upon minority children).

Furthermore, the decision on whether a regulation of commercial speech directly advances the state's interest, for example, is an exercise of constitutional adjudication wherein appellate courts play a special role. Applying the legal tests that have evolved in constitutional law invariably requires subtle legal distinctions, a sense of history, and an ordering of conflicting rights, values and interests. The Supreme Court has often warned that each First Amendment case must be analyzed separately, based on the particular method of communication involved, and the values and dangers implicated. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 501, 101 S.Ct. 2882, 2889, 69 L.Ed.2d 800 (1981); *FCC v. Pacifica Foundation*, 438 U.S. 726, 748, 98 S.Ct. 3026, 3039, 57 L.Ed.2d 1073 (1978); *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557, 95 S.Ct. 1239, 1245, 43 L.Ed.2d 448 (1975); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503, 72 S.Ct. 777, 781, 96 L.Ed. 1098 (1952); *Kovacs v. Cooper*, 336 U.S. 77, 97, 69 S.Ct. 448, 458, 93 L.Ed. 513 (1949). "The protection available for particular commercial expression turns on the nature both of the expression and of the government interests served by its regulation." *Central Hudson Gas, supra*, 447 U.S. at 563, 100 S.Ct. at 2350. The questions raised in such cases involve mixed questions of law and fact. In this case, for instance, the extent to which *Metromedia, Bellanca, LaRue* and other cases temper the *Central Hudson Gas* test is a legal question.

There are limits to which important constitutional questions should hinge on the views of social scientists who testify as experts at trial. Suppose one trial judge sitting in one state

The plaintiffs in *Lamar Outdoor Advertising* support their standing by estimating that they lose hundreds of thousands of dollars of advertising income by virtue of the Mississippi restriction. *See Metromedia, Inc. v. City of San Diego,* 453 U.S. 490, 504 n. 11, 101 S.Ct. 2882, 2890 n. 11, 69 L.Ed.2d 800 (Justice White, for plurality), 544, 101 S.Ct. at 2911 (Justice Stevens, dissenting in part) (1981). It is beyond our ability to understand why huge sums of money would be devoted to the promotion of sales of liquor without expected results, or continue without realized results. No doubt competitors want to retain and expand their share of the market, but what businessperson stops short with competitive comparisons? It is total sales, profits, that pay the advertiser; and dollars go into advertising only if they produce sales. Money talks: it talks to the young and the old about what counts in the marketplace of our society, and it talks here in support of Mississippi's concerns.

The approach taken by the Supreme Court in *Central Hudson Gas* is worthy of study here. There the Court found:

> There is an immediate connection between advertising and demand for electricity. Central Hudson would not contest the advertising ban unless it believed that promotion would increase its sales. Thus, we find a direct link between the state interest in conservation and the Commission's order.

447 U.S. at 569, 100 S.Ct. at 2353. The plaintiffs here try to distinguish *Central Hudson Gas* by arguing that the electric utility in that case was a monopoly, and therefore was not competing for a share of the market as are the advertisers here. In fact, however, the Court expressly found

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believes a sociologist who has found no link between alcohol abuse and advertising, while another trial judge sitting in another state believes a psychiatrist who has reached the opposite conclusion. A similar situation actually occurred here. Should identical conduct be constitutionally protected in one jurisdiction and illegal in another? Should the fundamental principles of equal protection delivered in *Brown v. Board of Education of Topeka,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), be questioned if the sociological studies regarding racial segregation set out in the opinion's footnote 11 are shown to be methodologically flawed? Should the constitutionality of the property tax as a means of financing public education, resolved in *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973), depend on the prevailing views of educators and sociologists as to the existence of a cost-quality relationship in education? Does capital punishment become cruel and unusual when the latest regression models demonstrate a lack of deterrence? The social sciences play an important role in many fields, including the law, but other unscientific values, interests and beliefs are transcendent.

Perhaps for these reasons, the Supreme Court's recent commercial speech and other relevant speech cases indicate that appellate courts have considerable latitude in deciding whether restrictions on speech are justified. In none of them did the Court rely heavily on fact findings of the trial court. In *Bolger v. Youngs Drug Products Corp.,* — U.S. —, 103 S.Ct. 2875, 77 L.Ed.2d 469 (1983), the Court struck down 39 U.S.C. § 3001(e)(2), a law prohibiting the mailing of unsolicited contraceptive advertisements. It agreed that the government had a substantial interest in aiding parents' efforts to control the manner in which their children became informed about birth control. The Court held, however, that the statute provided only the most limited incremental support for the interest asserted, in part by "reasonably assum[ing] that parents already exercise substantial control over the disposition of mail once it enters their mailboxes." 103 S.Ct. at 2884. In *Metromedia,* despite assertions that "the record is inadequate to show any connection between billboards and traffic safety" the judgment of the Court agreed with the "common-sense" belief of local lawmakers and other courts that billboards do pose substantial traffic safety hazards. 453 U.S. at 508–09, 101 S.Ct. at 2892–93. In *Bellanca,* the Court again deferred to the "common sense" conclusion of the state legislature that "any form of nudity coupled with alcohol in a public place begets undesirable behavior." 452 U.S. at 718, 101 S.Ct. at 2601. Similarly in *Central Hudson Gas,* the Court in another apparent exercise of judicial notice found "an immediate connection between advertising and demand for electricity" and therefore a direct link between the ban on advertising and the state interest in conservation. 447 U.S. at 569, 100 S.Ct. at 2353. *See also Guzick v. Drebus,* 431 F.2d 594, 599 (6th Cir.1970), *cert. denied,* 401 U.S. 948, 91 S.Ct. 941, 28 L.Ed.2d 231 (1971) (holding in First Amendment case that, "when dealing with questions of constitutional magnitude, we are not at liberty to accept the fact trier's findings merely because we consider them not 'clearly erroneous' " under Fed.R.Civ.P. 52(a)).

that the utility was in direct competition with other suppliers in certain markets:

> Monopoly over the supply of a product provides no protection from competition with substitutes for that product. Electric utilities compete with suppliers of fuel oil and natural gas in several markets, such as those for home heating and industrial power. This Court noted the existence of inter-fuel competition 45 years ago, see *West Ohio Gas Co. v. Public Utilities Comm'n*, 294 U.S. 63, 72, 55 S.Ct. 316, 321, 79 L.Ed. 761 (1935). Each energy source continues to offer peculiar advantages and disadvantages that may influence consumer choice.

Id. at 567.

Metromedia is also instructive. While noting the meager record on the question of whether the billboard ban directly advanced governmental interests, the judgment of the Court continued:

> Noting that "[b]illboards are intended to, and undoubtedly do, divert a driver's attention from the roadway," *ibid.*, and that whether the "distracting effect contributes to traffic accidents invokes an issue of continuing controversy," *ibid.*, the California Supreme Court agreed with many other courts that a legislative judgment that billboards are traffic hazards is not manifestly unreasonable and should not be set aside. We likewise hesitate to disagree with the accumulated, common-sense judgments of local lawmakers and of the many reviewing courts that billboards are real and substantial hazards to traffic safety. There is nothing here to suggest that these judgments are unreasonable. As we said in a different context, *Railway Express Agency, Inc. v. New York, supra,* [336 U.S. 106] at 109, 69 S.Ct. [463] at 465 [93 L.Ed. 533]:
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> > "We would be trespassing on one of the most intensely local and specialized of all municipal problems if we held that this regulation had no relation to the traffic problem of New York City. It is the judgment of the local authorities that it does have such a relation. And nothing has been advanced which shows that to be palpably false."

453 U.S. at 508–09, 101 S.Ct. at 2892–93. As in *Metromedia*, the subject of regulation here—liquor—must be viewed as a matter of peculiar importance to state and local authorities by virtue of the Twenty-first Amendment.

[1] We conclude that the advertising ban is sufficiently justified to pass constitutional muster. We simply do not believe that the liquor industry spends a billion dollars a year on advertising solely to acquire an added market share at the expense of competitors. Whether we characterize our disposition as following the judicial notice approach taken in *Central Hudson Gas*, or following the "accumulated, common-sense judgment" approach taken in *Metromedia*, we hold that sufficient reason exists to believe that advertising and consumption are linked to justify the ban, whether or not "concrete scientific evidence" exists to that effect. Moreover, we believe that the added presumption in favor of validity required by *LaRue*, *Bellanca* and *Queensgate* helps to establish the balance in favor of the state, if balancing be necessary.

The advertisers argued, to the satisfaction of the trial judge in *Lamar Outdoor Advertising*, that even if there is a connection between advertising and consumption, the intrastate advertising ban does no good because Mississippi residents are "inundated" and "saturated" with liquor advertising in broadcasts, magazines and newspapers entering from outside the state. 539 F.Supp. at 829–30.

We do not find this argument compelling for several reasons. First, the plaintiffs would not be pursuing this case so vigorously if the market were truly saturated. They believe that they will find customers interested in further promoting liquor products. Second, their evidence that liquor advertisements appeared in national magazines in the Jackson library, out-of-state radio and television broadcasts and out-of-state newspapers does not establish that advertising would not dramatically increase if the intrastate ban is invalidated. Again, the willingness of the fifty-six plaintiffs in *Lamar Outdoor Advertising* to litigate this matter suggests otherwise. Third, this argument cuts both ways. The commercial speech doctrine was created primarily out of concern in protecting consumers and the information they receive. If it were true that consumers are now being inundated with commercial information about liquor in contravention of the state's interests, the values behind the commercial speech doctrine would not be very much threatened.

C. Part Four: Extensiveness of The Regulation

Finally, we hold that the advertising restrictions are not more extensive than necessary to serve the state interest, as required by the fourth element of *Central Hudson Gas*. Again, we must apply this requirement in light of *LaRue, Bellanca* and *Queensgate*. *See LaRue*, 409 U.S. at 116, 93 S.Ct. at 395 ("wide latitude as to choice of means . . . must be accorded the state agency").

[2] The state restrictions on liquor advertising are no broader than necessary to pursue its goal of preventing the artificial stimulation and promotion of liquor sales and consumption. No other types of advertising are restricted.

Again, we find the plurality's opinion in *Metromedia* helpful:

> [W]e reject appellants' claim that the ordinance is broader than necessary and, therefore, fails the fourth part of the *Central Hudson* test. If the city has a sufficient basis for believing that billboards are traffic hazards and are unattractive, then obviously the most direct and perhaps the only effective approach to solving the problems they create is to prohibit them. The city has gone no farther than necessary in seeking to meet its ends. Indeed, it has stopped short of fully accomplishing its ends: It has not prohibited all billboards, but allows onsite advertising and some other specifically exempted signs.

453 U.S. at 508, 101 S.Ct. at 2892. By analogy, the state here believes that the advertising itself represents a hazard to the health, safety and welfare of its citizens. The restrictions permit certain types of informational advertising of use to the consumer such as price advertising inside licensed premises, but bar those displays that it believes will encourage excess consumption.

We do not believe that a less restrictive time, place and manner restriction, such as a disclaimer warning of the dangers of alcohol, would be effective. The state's concern is not that the public is unaware of the dangers of alcohol. *See* Restatement (Second) of Torts § 402A comment j (1965) (sellers of alcoholic beverages not required to warn of dangers, which are generally known and recognized). The concern instead is that advertising will unduly promote alcohol consumption despite known dangers.[9]

The advertisers offer, as an example of constitutional manner and timing of advertising regulation, the prohibition of a billboard, located by a drive-through bar at the edge of a wet county line, announcing that the bar offers "the last chance to buy mixed drinks for the next 30 miles." That prohibition would be proper, they say, because the billboard intentionally promotes dangerous consumption and unlawful transportation while driving 30 miles through the dry county. The mistake of that argument is that it regards the state interest as being opposed only to the unlawful use of liquor. But Mississippi's policy is much broader, as stated in the 1966 statute: it is against the sale and possession of intoxicating liquor. All billboards advertising liquor are adverse to that policy and interest for the same reason that the billboard of the last-chance bar would be adverse to a policy against transportation of liquor through a dry county.

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[9] *Cf. Capital Broadcasting, supra,* 333 F.Supp. at 585 ("Congress had convincing evidence that the Labeling Act of 1965 had not materially reduced the incidence of smoking").

IV. Equal Protection

The plaintiffs maintain in the alternative that the Mississippi advertising ban violates the Equal Protection Clause of the Fourteenth Amendment, in that it discriminates against the local media by banning intrastate advertising while allowing advertising to enter Mississippi from out-of-state media. The district court in *Lamar Outdoor Advertising* agreed, finding no rational link between the classification and the goal of controlling the artificial stimulation of the sale and consumption of artificial beverages. 539 F.Supp. at 830–31.

The plaintiffs ask us to apply the strict scrutiny standard of review, relying on the fundamental rights strand of strict scrutiny equal protection doctrine. The Supreme Court has limited the fundamental rights subject to strict scrutiny to those rights which are explicitly or implicitly guaranteed by the Constitution. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 34, 93 S.Ct. 1278, 1297, 36 L.Ed.2d 16 (1973). Freedom of speech is of course a fundamental right that would ordinarily trigger strict scrutiny. *Police Department of Chicago v. Mosley*, 408 U.S. 92, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972). The plaintiffs reason that, since the First Amendment has been extended to commercial speech which concerns lawful activity and is not misleading, strict scrutiny is appropriate.

[3] Strict scrutiny is clearly inappropriate. In this case we have held the Mississippi law entirely legal under the First Amendment, and parties cannot insist on strict scrutiny merely by asserting a First Amendment right that the court ultimately finds not to be violated. Furthermore, in all cases commercial speech is entitled to only a limited measure of protection under a different standard of review. Under the *Central Hudson Gas* test, the state must demonstrate a substantial interest which is directly advanced by the regulation. If the right to advertise for profits were fundamental, then parties to any particular commercial speech regulation could rely on a stricter standard of review—requiring a compelling state interest and necessary means chosen to attain it—by locating an unregulated class of advertisers and insisting on an equal protection analysis by the court.

It is important to recognize that, for identification with the commercial speech doctrine and the interests it protects, there is no classification here on which an equal protection analysis can be based. Commercial speech has been termed "unique because the speech does not advance any value implicating the interests of the speaker in the speech." Note, *Constitutional Protection of Commercial Speech*, 82 Colum.L. Rev. 720, 750 (1982). The primary interests protected are those of the *listener*—the consumer—in *receiving* information. In *Virginia Board of Pharmacy*, the Court made clear that the First Amendment protects the right to receive information, 425 U.S. at 756–57, 96 S.Ct. at 1822–23, and noted that "[a]s to the particular consumer's interest in the free flow of commercial information, that interest may be as keen, if not keener by far, than his interest in the day's most urgent political debate," *id.* at 763, 96 S.Ct. at 1826. We do not mean to suggest that media advertisers lack standing to challenge commercial speech regulations. *See Metromedia*, 453 U.S. at 504 n. 11, 101 S.Ct. at 2890 n. 11 (Justice White, for plurality), 544, 101 S.Ct. at 2911 (Justice Stevens, dissenting in part). Nevertheless, "[t]he First Amendment's concern for commercial speech is based on the informational function of advertising . . . [and] there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity." *Central Hudson Gas*, 447 U.S. at 563, 100 S.Ct. at 2350.

Hence, unlike other areas of First Amendment protection, the commercial speech doctrine is concerned primarily with the level and quality of information reaching the listener. From this vantage point, there is no classification upon which the plaintiffs can assert a meaningful equal protection claim. From the standpoint of the consumer, all residents in Mississippi have access to liquor advertising from interstate and intrastate sources, and indeed receive a great deal of out-of-state advertising according to the plaintiffs. There is no discrimination against particular classes of consumers in the state.

[4] While the economic interests of the intrastate advertisers are at a disadvantage compared with those of the interstate media, this fact raises no First Amendment concerns for the reasons explained above, and gives rise to an equal protection issue requiring only minimal scrutiny. Under such deferential scrutiny of economic regulation, the classification challenged need only be rationally related to a legitimate state interest, *New Orleans v. Dukes,* 427 U.S. 297, 303, 96 S.Ct. 2513, 2516, 49 L.Ed.2d 511 (1976), and is invalid only if "wholly irrelevant to the achievement of the State's objective," *McGowan v. Maryland,* 366 U.S. 420, 425, 81 S.Ct. 1101, 1104, 6 L.Ed.2d 393 (1961).

Most assuredly there is nothing suspect about a state discriminating against its own citizens, in this case advertisers originating messages within the state. The state argues that it lacks jurisdiction to control transmissions and mailings entering its boundaries from other states, and cannot, for practical and legal reasons, block such disseminations. The state has reasonably chosen to restrict its regulation to those over which it has control. The Equal Protection Clause does not require "a legislature to enact a statute so broad that it may well be incapable of enforcement." *Michael M. v. Superior Court of Sonoma County,* 450 U.S. 464, 474, 101 S.Ct. 1200, 1207, 67 L.Ed.2d 437 (1981). We think it exceedingly unlikely that the state could block, jam, or otherwise ban all magazines, newspapers, cable signals and radio and television broadcasts originating from other states that contain liquor advertisements, as a practical matter, and in the face of the Commerce Clause, the Supremacy Clause and the First Amendment. In upholding a Utah regulation that banned cigarette billboards while allowing cigarette advertisements in interstate publications, Justice Brandeis stated that "[i]t is a reasonable ground of classification that a state has power to legislate with respect to persons in certain situations and not with respect to those in a different one." *Packer Corporation v. Utah,* 285 U.S. 105, 110, 52 S.Ct. 273, 274, 76 L.Ed. 643 (1932). Furthermore, with economic regulation, "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." *Williamson v. Lee Optical of Oklahoma, Inc.,* 348 U.S. 483, 489, 75 S.Ct. 461, 465, 99 L.Ed. 563 (1955). The state could have concluded rationally that local advertising was the promotion of intoxicating liquor that was susceptible to regulation.

V.

We conclude that the Mississippi regulatory scheme is constitutionally valid. The judgment in *Dunagin* is AFFIRMED. The judgment in *Lamar Outdoor Advertising* is REVERSED.

JERRE S. WILLIAMS, Circuit Judge, with whom TATE, Circuit Judge, joins, specially concurring:

I.

I agree wholeheartedly with the result reached by the majority. I also am in full agreement with the Court's reliance upon the test developed in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York,* 447 U.S. 557, 566, 100 S.Ct. 2343, 2351, 65 L.Ed.2d 341 (1980). The application of this test properly leads us to the result reached by the majority

It is with regret that I cannot join in the majority opinion, however, because of implications it sees in the Twenty-first Amendment. The majority opinion in Part II B discusses the Twenty-first Amendment as having implications justifying unusual and wholly unique intrusions upon the personal liberties of American citizens in the regulation of intoxicating liquor. I concede that there has been some indication of this possible effect of the Twenty-first amendment in *California v. LaRue,* 409 U.S. 109, 114, 93 S.Ct. 390, 395, 34 L.Ed.2d 342 (1972), and in

New York State Liquor Authority v. Bellanca, 452 U.S. 714, 717, 101 S.Ct. 2599, 2601, 69 L.Ed.2d 357 (1981). I view the doctrine as mischievous and insidious.

The purpose of the Twenty-first Amendment was to remove all constitutional inhibitions as to the state's power to control intoxicating liquors as against the powers of the federal government, particularly but not exclusively in the domain of interstate and foreign commerce. It had nothing whatsoever to do with encroachment upon the individual liberties protected in the Constitution. The governments, state and federal, had exactly the same powers to control spirits after the passage of the Twenty-first Amendment as they had before, as against claims of individual liberty under free-speech, due process, and equal protection.

A conclusion that the Twenty-first Amendment justifies greater intrusions upon the constitutional liberties of individual citizens than would otherwise be the case is an insidious doctrine because it holds that the Constitution places liquor in a totally unique position different from even dangerous drugs and other vice-prone products or occupations.

The power to control the production, sale, advertising, and consumption of intoxicating beverages in ways different from controlling the same social processes as they relate to food products, automobiles, television sets, and the like is based wholly upon the recognition that spirits create special problems which entitle the state to react with special legislative solutions. This recognition has been with us from the beginning of our society right up to the present. It falls in the area of "police power," if you will. It does not depend to any degree upon the Twenty-first amendment.

In recognizing the special problems related to liquor regulation, I have no difficulty whatsoever in agreeing with the cogent analysis of the majority opinion that the control of liquor advertising by the State of Mississippi does not run afoul of the constitutional protections of individual liberty. To hold otherwise exalts commercialism above the genuine concerns the State of Mississippi has a right to feel for its citizens, and the problems that liquor creates in our society.

II.

In one other matter I wish to reinforce the analysis in the majority opinion. The Court describes the "battle of the experts" on the question of whether advertising simply induces people to change brands of liquor or actually stimulates consumption. What this battle of the experts was actually asking us to do was to engage in the now outmoded substantive economic due process analysis. The fact that there was a battle of the experts on this issue proved that the issue was one of legislative policy. If the legislature of the State of Mississippi believes that liquor advertising increases liquor consumption, that is a legislative judgment that it has a right to make. And the fact that there may be some experts who think otherwise justifies testimony before the legislative committee considering the legislation but does not justify a demand that this Court resolve that policy decision. To treat this issue as subject to our power to decide would lapse into the now thoroughly discredited earlier Supreme Court due process analysis which is exemplified by the statement by the Court in the notorious *Lochner v. State of New York* case, 198 U.S. 45, 57, 25 S.Ct. 539, 543, 49 L.Ed. 937 (1905): "Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week.... There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health or the health of the individuals who are following the trade of a baker."

It is not for the courts to tell the states that they no longer have power to place reasonable limitations upon the commercial aspects of businesses which the state properly feels create a high level of social concern. The states can ban the sale of liquor entirely, just as they can of dangerous drugs. They can limit the sale to state-owned package stores. They can ration.

They can prohibit all consumption of intoxicating beverages in public. They can engage in many types of regulations of varying stringency. To hold that one of those regulations cannot be a restriction on commercial exploitation by way of advertising would be a curious and unjustifiable anomaly.

GEE, Circuit Judge, with whom GOLDBERG, POLITZ, RANDALL and HIGGINBOTHAM, Circuit Judges, join, dissenting:

Judge Reavley's opinion for a majority of the court—workmanlike and thorough as always—takes a view of the Mississippi arrangement regulating liquor advertising with which it is hard to disagree violently. Even so, I believe that the better one is expressed in our panel opinions, reported at 701 F.2d 314 and 335. Since it is there set out in great detail, I see no occasion to write further.

For the reasons there expressed, then, I respectfully dissent.

HIGGINBOTHAM, Circuit Judge, concurring in the dissenting opinion:

I join Judge Gee's dissent. I remain convinced that the panel decision was a correct application of the doctrine of commercial speech as developed by the Supreme Court. I take advantage of the freedom of dissent to add this brief separate statement to express a view I do not see clearly stated elsewhere.

The immediate turn of this case in the long view of constitutional principle has little significance. The case may be little more than how judges view whiskey, or how judges apply their own notions of what is a good and what is a bad law. This intended exaggeration is a sufficiently accurate description of this type of judicial review that we are hesitant to cheerfully admit engaging in it. The point is that the balancing of interests exercise of *Virginia Board of Pharmacy* and its younger companions reduces the exaggeration to an uncomfortable level.

The efficiency with which a market allocates resources unquestionably depends on a free flow of market information. I had supposed that it was the province of the Congress and particularly a state legislature to decide whether government ought to weigh into that free exchange; that is, I would not have thought it the role of the courts to quarrel with a state legislature's regulatory pushes and shoves of its own economy.

Nevertheless, the cases instruct that we are to so review and I am reluctant to express my own doubts, which go to the very notion of commercial speech, by applying those cases in a less than faithful way. Doing so substitutes one brand of activism for another.

I agree with much of the majority opinion and much of Judge Williams' concurring opinion but I suggest that hesitancy about the type of inquiry provoked by the commercial speech doctrine has affected the weighing of the state's asserted interests. If the First Amendment is a source of protection for the flow of market information to consumers it is a remarkable draw upon First Amendment jurisprudence that turns that idea into a state's right to keep information pertinent to a lawful transaction from consumers for fear that consumers might misapply it. Of course we are Lochnerizing and intruding into the affairs of a state. I suggest that distaste for the intrusion has created a reluctance in actual application to give full sway to the commercial speech doctrine as developed by the Supreme Court, and was an unidentified hand on the weighing scale of the majority; that it was this added weight which separated the majority and dissenting opinions.

It is hard for me to see that Mississippi has "won" this case. It can ban the advertising of whiskey, true enough, but only because federal judges answerable to no voters have decided that they "agree" with the Mississippi legislature. In the long haul this is no win at all. That seems to me to be a predictable, if not inevitable, consequence of the doctrine itself. This exaggerates, but it is sufficiently accurate that we ought to be troubled. I am.

THE
GEORGE
WASHINGTON
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Washington, D.C. 20052 / The National Law Center

May 29, 1985

Honorable Timothy E. Wirth, Chairman
Subcommittee on Telecommunications,
Consumer Protection and Finance
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Wirth:

RE: Hearings on Beer and Wine Commercials

I am writing to briefly make two suggestions and one comment growing out of your hearings on "Beer and Wine Advertising: The Impact of the Electronic Media," on Tuesday, May 21, 1985.

At the Hearings representatives from the broadcasting industry presented significant amounts of evidence tending to show that they were already devoting significant amounts of broadcast time to warning viewers about the problems associated with alcohol consumption, and suggesting, therefore, that additional legislative measures were not necessary. Opponents strongly suggested, however, that all of this prime-time programming and time for public service announcements was made available in large part only because the industry was fearful of governmental regulation, and that the amount of broadcasting time devoted to alcohol problems would decrease dramatically once the likelihood of governmental action decreased.

I respectfully suggest that it would be very helpful to the Committee in resolving this issue if the Chairman would write to the three major networks, Taft Broadcasting, and other stations and broadcasting entities which submitted these kinds of data, and ask them to supply information concerning corresponding broadcasts about the dangers of tobacco products during the same time periods. Since virtually all members of the Committee seemed to agree that tobacco was at least as dangerous as alcohol, and that this judgment applies across the country in all broadcast market areas, it would seem logical that at least as much time would be devoted to this topic as to the dangers of alcohol. If this is not true, and absent some persuasive explanation from the broadcasting witnesses, members of the Committee may reasonably make the inference that the alcohol warning messages are being broadcast largely to defeat governmental action in this area, and would substantially decrease in number if no action was taken.

Indeed, in this same letter, the Chairman may ask the broadcasters to explain any substantial disparities between broadcast time devoted to the problems of alcohol, and broadcast time devoted to the problems of tobacco. Since some Committee members apparently felt that alcohol and tobacco were being "singled out" and that the inquiry should be somewhat broader, I see no reason why the letter might not ask for similar data concerning the dangers posed by several other major consumer products. Thus, for example, broadcasters could be asked to spell out the efforts they are making to warn the public about what they believe are the five (or even 10) most dangerous consumer products in America.

Secondly, prior to acting on my suggestion that subpoenas duces tecum be issued to compel the disclosure of documents in the possession of beer and wine manufacturers and their advertising agencies concerning commercials for these products, the Chairman may on his own initiative wish to write a letter to these potential respondents asking whether they would be willing to submit these documents voluntarily for confidential review by the Committee staff. I believe these documents — those showing surveys, studies, plans, advertising strategies, target audiences, audience composition, etc. — could be important for the Committee for at least two reasons.

First, it is only logical to assume that the manufacturers who have spent -- and are continuing to spend -- billions of dollars on beer and wine commercials would have developed significant amounts of information concerning how effective the ads are, however they can best and most efficiently be targeted, the effects of different ads on different sigments of the population, etc. Since no private researcher could possibly fund such studies, and, in any event, probably would not have access to the necessary relevant data, these studies would provide the most accurate and comprehensive means of answering the major questions before this Committee.

At the hearings there was some discussion about whether advertising plans to attract a particular audience -- e.g., alcohol addicts, potential alcoholics, children, etc. — were invidious. Without so labeling this conduct, it is nevertheless a reasonable presumption — one followed uniformly by the Federal Trade Commission and the many courts and agencies called upon to review advertising -- that manufacturers and advertisers are presumed to know a great deal about the effects of their commercials, and that if they deliberately target a given population segment that segment is probably being reached by the ad. Thus, regardless of whether such conduct is invidious or simply makes good economic sense, evidence that ads tend to target alcoholics, potential alcoholics, and children would be an important piece of evidence indicating that the commercials do in fact have this effect.

In any event, this is exactly what the F.T.C. discovered when it likewise subpoenaed the same kind of documents from cigarette manufacturers and their advertising agencies. The many similarities between the two products, and the ways in which they are advertised, provide some reason to believe that similar documents now lie in the hands of the alcohol industry. If they do not, the industry has only to voluntarily comply with the Chairman's request and put this inquiry to rest. If, however, they refuse to comply, even after being given satisfactory assurances of confidentiality, the adverse inference that they have something to hide grows far stronger. In such a case, I would suggest that the Committee would be more than justified in making this adverse inference, or in using their refusal as justification to seek the information through appropriate subpoenas.

Thirdly, the question of whether increased advertising for alcoholic beverages leads to increased consumption and to increased abuse became a central issue in the hearings. On this point the language from the 5th Circuit's en banc opinion in Dunagin v. City of Oxford, Miss., 718 F.2d 738 (1983), upholding the constitutionality of local bans on all advertising for alcoholic products, may be of interest to the Committee.

First, the Trial Court Judge in the Dunagin case concluded that the "purpose of advertising alcoholic beverages is to promote consumption and to stimulate sales of alcoholic beverages. Increased sales of these beverages are highly correlated with increased problems associated with their use." 489 Fed Supp at 771 n. 11.

As the Dunagin Court stated at page 747 of its decision, "Other courts facing similar fact situations have reached the same conclusion that advertising and consumption are directly linked," citing three cases.

At page 749 the en banc Court states, "It is beyond our ability to understand why huge sums of money would be devoted to the promotion of sales of liquor without expected results, or continue without realized results. No doubt competitors want to retain and expand their share of the market, but what businessperson stops short with competitive comparisons? It is total sales, profits, that pay the advertiser; and dollars go into advertising only if they produce sales."

Finally, at page 750, after considering all the evidence and precedents, the en banc Court stated that "We conclude that the advertising ban is sufficiently justified to pass constitutional muster. We simply do not believe that the liquor industry spends a billion dollars a year on advertising solely to acquire an added market share at the expense of competitors."

If there are any questions, please feel free to call me at 676-7229.

Respectfully submitted,

John F. Banzhaf III
Professor of Law
and Executive Director and Chief Counsel
of Action on Smoking and Health (ASH)

JFB:fdr
Enclosure:
  Testimony w/attachments

Mr. WIRTH. Professor Banzhaf, thank you very much.

Our next witness, Dr. Lloyd Johnston, from the University of Michigan, conducts an annual survey on drug and alcohol use and attitudes of graduating high school seniors. Dr. Johnston is one of our Nation's leading experts in this area, and Dr. Johnston, we are pleased that you could join us today.

Thank you for being here.

STATEMENT OF LLOYD D. JOHNSTON

Mr. JOHNSTON. Thank you, Mr. Chairman and members of the committee. I appreciate the opportunity to talk with you on this important subject. Like Professor Banzhaf, I am not part of either of the coalitions represented here either.

I want to talk to you about two things in the brief time I have, and I have submitted a written statement for the record. I simply have to touch on the high points, given the time limitations.

The first has to do with the level of alcohol consumption among young people in America today, and the second has to do with the possible connection of advertising to that level of consumption.

By the time they are 13 years old, about one-third of Americans have started to drink. By the time they are 15 years old, three-quarters of young Americans have started to drink. By the time they have finished high school, virtually all young Americans have started to drink, over 93 percent, according to the most recent national survey of high school students that we completed in 1984.

We survey about 17,000 students a year and have been doing so each year since 1975 on representative samples of high school seniors.

Among these seniors we find that about two-thirds are current drinkers—that is, they have had alcohol in the past month—but some other statistics will be of more concern to you. One in twenty is a daily drinker. These are youngsters 17 or 18 years old.

The statistic which shocks most people, however, is the fact that 40 percent of these students say that in the past 2 weeks they have had five or more drinks in a row, virtually all of whom I would assume have gotten drunk. Thirty percent say all or most of their friends get drunk at least once a week. That is a lot of alcohol consumption.

One of the statistics that is less visible because it is still an article which is still in press has to do with the number of youngsters who are using alcohol for psychological coping. Despite the recent slight downturn in drinking among young people that we have been documenting—and I emphasize that it has been slight—we are finding a continuing increase in the proportion of young men and women who say that they are drinking to get away from their problems, to deal with anger and frustration.

These are coping motives, and it seems to me these people are at particular risk. The number who say they are drinking for these reasons has increased by half during the life of the study and now stands at about one in twenty of young people in the senior year in high school.

Regarding the lethal combination of drinking and driving, nearly half in the past 2 weeks have been passengers in a car where the driver was drinking. In almost all cases I would expect that is a peer. A quarter of them have been in a car where the driver was drunk. About one in five have themselves been driving after drinking five or more drinks in a row. Undoubtedly, they were drunk drivers.

So there is a lot of drinking, there is a lot of drunkenness, there is a lot of exposure to drunk driving and there is a lot of drunk driving among today's American youngsters.

The situation in which they most often use is at parties. The heavy drinking I mentioned to you is largely a party phenomenon. Seldom are adults present. Their primary reasons for drinking are to have a good time with their friends and to get high.

Perceived risk has proved to be an important deterrent to the use of certain other drugs, and particularly heavy marijuana use, which has declined very substantially in the last 7 years or so. But for alcohol, there is not very much of a perception of great risk involved, and I don't have time to go into statitics but they are in my prepared statement.

Peer norms are certainly not very restrictive, as I said. Thirty percent say most or all of their friends get drunk every week.

Of particular relevance to the advertising issue you are looking at is the fact that beer is the predominant beverage of use and abuse among these youngsters. Virtually all of the daily drinkers drink beer daily. Nearly all of those who had five or more drinks in a row during the prior two weeks did so with beer.

I think it is important to emphasize that many youngsters, and adults, for that matter, see beer as somehow a less risky form of alcohol consumption than other forms of alcohol.

For all three of the major classes of alcoholic beverages, it appears there has been a gradual increase in most usage measures from 1976 to 1980—1976 is when the study began—but this undoubtedly followed a couple decades of increase before that. But since 1980, there has been the very modest decline that I mentioned.

It coincides, however, with a much greater decline in illicit drug use, and certainly one has to wonder whether alcohol use would not have dropped more in proportion to illicit drugs among young people were it not buttressed by a major advertising campaign. In fact, it is of interest to note that of the three beverage classes, the beer consumption statistics on current prevalence of use show the least absolute and the least proportionate drops from the peak consumption levels, and only in 1984 did heavy party drinking involving beer begin to show any decline at all.

Consider some of the mechanisms by which advertising is likely to influence consumption in general and heavy consumption in particular. For one, it can influence the perceptions of and expectations about what is normal and expected behavior. You saw on the videotape this morning the young man saying he thought it was normal to take 10 drinks in a row.

It can affect the perceived social acceptability of the behavior, and it can influence the other social connotations of the behavior and the perceived positive consequences. That's obvious. But it can also draw attention away from the fact that there are negative consequences, and there is a long list of them, and it can suppress media coverage of or program content about these negative outcomes because the media fear retribution from such major advertisers.

This last effect is abundantly clear and well documented in the case of cigarette advertising and the print media. I suspect it is present but more subtle in the case of alcohol coverage in the broadcast media.

I am reminded of an early NIAAA prevention poster that contained a number of recently emptied beer glasses and read, "If you drink a lot of beer, you drink a lot." Such a message, which is all too accurate, casts a very different light on heavy beer consumption than the rosy one seen day after day in beer commercials.

Note that the electronic media do not carry any messages of moderation today. Their public service announcements focus almost entirely on not drinking and driving, and important as this problem is, it is only one among the many that alcohol causes. In fact, it is my guess that the primary way in which we will be able to reduce even drunk driving is to reduce heavy drinking, and I don't see that goal being pursued by the media's current public service announcements.

There is more to my statement, but I have exceeded my time. Thank you very much.

[Testimony resumes on p. 387.]

[The prepared statement of Mr. Johnston follows:]

TESTIMONY OF

LLOYD D. JOHNSTON, PH.D.
PROGRAM DIRECTOR
INSTITUTE FOR SOCIAL RESEARCH
THE UNIVERSITY OF MICHIGAN

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS,
CONSUMER PROTECTION, AND FINANCE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

IN HEARINGS HELD ON
BEER AND WINE ADVERTISING: THE IMPACT OF THE ELECTRONIC MEDIA
MAY 21, 1985

Mister Chairman and members of the Subcommittee, I appreciate the opportunity to speak to you today on the issue of beer and wine advertising in the electronic media. My comments will deal with two aspects of this issue: first, the levels and patterns of alcohol consumption currently observed among American young people, and second, the issue of how advertising may contribute to those patterns.

As you may know, I—along with two other social psychologists at the University of Michigan (Drs. Jerald G. Bachman and Patrick M. O'Malley)—direct the long term series of annual surveys of American high school students known as the High School Senior Surveys or more formally as Monitoring the Future: A Continuing Study of the Lifestyles and Values of Youth. This series was launched in 1974 by the White House Special Action Office on Drug Abuse Prevention, but has been sustained for most of its existence by research grants from the National Institute on Drug Abuse. Since 1975 we have measured illicit drug use, cigarette smoking, alcohol consumption, and a number of other factors in each of the last ten graduating classes of high school seniors, surveying nationally representative samples of approximately 17,000 seniors in 130 high schools nationwide each year (Johnston, O'Malley, and Bachman, 1984).

Levels of Use

Several facts to come out of these surveys are worth consideration in the current deliberations, in my opinion, the first of which concerns the sheer magnitude of the problem of alcohol use among our young people. Despite the fact that in virtually all states the sale of alcohol to minors under the age of 18 is illegal, we find that nearly all American adolescents have tried alcoholic beverages by that point in their lives. In the last eight graduating classes (most seniors are 17 or 18 years of age) we have found a lifetime prevalence of drinking of 93% of all seniors. (Lifetime prevalence of alcohol use for lower grade levels may be found in Figure 1 attached.) The vast majority of seniors (from 85% to 88%) have had a drink in the past year, and more than two-thirds (from 67% to 72%) have been drinking in just the past month.[1]

Of more concern is the fact that between 5% and 7% of the seniors in each graduating class could be classified as currently being daily or near-daily drinkers (defined as drinking on 20 or more occasions in the past 30 days). But particularly disturbing is the syndrome of heavy party drinking which has become so very prevalent among American teenagers. When asked whether, during the prior two week interval, they had consumed five or more drinks in a row—approximately 40% of each of these ten senior classes said that they had: about 50% of the boys and 30% of the girls. Four in every ten of these students! (In fact, more than a quarter of all seniors drank that much at least twice in the prior two weeks) I must say that I have yet to meet an adult who was not shocked by these figures.

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[1] Some notion of the current usage statistics for even younger age groups may be gained from the 1982 NIDA-sponsored National Household Survey on Drug Abuse (Miller et al., 1983). There it was found that among 12 or 13 year olds, 10% had used alcohol in just the past month; among 14 to 15 year olds, 23%; and among 16 to 17 year olds, 45%. Overall, between a quarter and a third of all 12 to 17 year olds were classified as "current drinkers," using the criterion of one or more drinks in the prior month. And for methodological reasons, which I will not try to describe here, I think these are conservative estimates. A recent Gallup survey says that 77% of all teenagers aged 13 to 18 have tried alcohol.

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One other statistic on alcohol use which I would like to bring to your attention comes from a scientific article currently in press (Johnston and O'Malley, in press). Despite the slight downturn in the overall alcohol prevalence statistics in the last couple of years, which may be observed in Table 1, we are finding that the proportion of seniors who say they are using alcohol for certain psychological coping motives has continued an increase which began at least as far back as when the study did. To be more specific, the proportion of seniors who say that one of their reasons for using alcohol is "to get away from my problems" has risen by half between 1976 and 1984, from 12% to 18% of all seniors. Similarly, the proportion who say they use to deal with anger and frustration has risen from 11% to 16% of all seniors. We find these shifts to be troubling.

Drinking and Driving

Regarding the lethal combination of drinking and driving, over 30% of today's seniors indicated that in just the past two weeks they have driven after consuming alcohol: and roughly 45% had been passengers in a car in which the driver had been drinking. The number who drove a car in that same two-week interval after consuming five or more drinks in a row stands at a disturbing 18%—or nearly one in every five seniors. Even more (one in every four) had been a passenger in a car where the driver had consumer that much again in just a two-week interval.

Males are about twice as likely as females to be the drunk drivers, but there is little difference between the sexes in their likelihood of being a passenger with a drunk driver.

Reasons for Use

Offered fifteen possible reasons for their drinking alcohol, these teenagers most often chose "to have a good time with my friends" followed by "to feel good or get high." The settings most often cited as where drinking takes place are "at a party" followed by "with one or two other people present." Seldom are adults present. In addition, some of these youngsters—particularly the heavier drinkers—drink when they are alone, at school, in cars, at home, and during the daytime hours.

Perceived Risks

Among the restraining forces we have found to be important to reducing the use of other substances—in particular marijuana—has been the belief among young people that use is harmful to the user physically and psychologically. This has particularly been true in the case of heavy use, where the proportion of seniors who believed regular marijuana use was dangerous for the user doubled—from one-third to two-thirds of all seniors—between 1978 and 1984. Over the same time interval daily marijuana use fell by more than one-half (from 11% to 5%), undoubtedly in large part because of the change in their belief about the harmfulness of the behavior.

So, how do American youngsters view the risks associated with alcohol use? When asked how much they thought people risk harming themselves physically or in other ways if they take one or two drinks nearly every day, four-fifths of the seniors thought that there was not a great risk involved here.

Asked the same question about having five or more drinks once or twice each weekend, the majority, as many as two-thirds in some classes, thought that there was not

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a great risk involved with this form of heavy party drinking. Even for having five or more drinks nearly every day,p136 one-third thought that there was not a great risk.

I think most objective observers would say that many of our young people are underestimating the dangers associated with these patterns of regular alcohol use.

Peer Norms

When it comes to peer norms regarding alcohol, fully 86% say their friends would disapprove of their drinking heavily every day, but only about half say their friends would object to their drinking heavily once or twice every weekend. (In fact, roughly 30% say that most or all of their friends "get drunk at least once a week.") From one-quarter to a third say their friends would not object to their having one or two drinks daily. In sum, peer norms are pretty permissive, particularly when it comes to heavy party drinking.

Beer, Wine and Spirits

Up to this point I have spoken about drinking in general, without differentiating between the three major classes of alcoholic beverages. But for the purposes of these hearings, these distinctions are important. Table 1 gives selected statistics for beer, wine, and spirits separately for each of the graduating classes under study. Several points are worth noting, the first being that beer accounts for the preponderance of alcohol use in this age group. This fact is particularly relevant when one considers the massive amount of advertising and promotion of beer to which the age group is exposed—particularly on television—and the number of times the imagery of partying with friends is used in it.

Of the daily drinkers in each graduating class, nearly all drink beer daily, whereas only about a third of them drink hard liquor daily, and considerably fewer drink wine daily. The story among the heavy party drinkers is much the same. Nearly all of those who have had five or more drinks in the past two weeks (39% in the Class of 1984) have taken that much beer on at least one of those occasions (36% in the same class) vs. only 21% for hard liquor and 13% for wine.

Advertising

For all three of these major classes of alcoholic beverages, it appears that there was a gradual increase in most usage measures from 1976 to about 1980 (undoubtedly following on a considerably greater rise in the preceding two decades); and since 1980 there has been a very modest decline in most of the prevalence rates. This coincides by the way with an even greater decline in illicit drug use; and certainly one has to wonder whether alcohol use would not have dropped more in proportion to the illicit drugs, were it not buttressed by a massive advertising campaign. In fact, it is of interest to note that of the three beverage classes, the beer consumption statistics on current (30 day) prevalence of use showed the least absolute and proportionate drops from the peak consumption levels. And only in 1984 did heavy party drinking involving beer begin to show any decline.

I would like to make a few additional remarks on the issue of advertising and promotion. It seems clear to me from our data and from other data in the field that young people today do not have a realistic appreciation of the hazards of drinking, nor do they have peer norms which would help to protect them from those hazards. Hard partying with alcohol is an "in" thing, not only in college age youngsters (where, based on our follow up studies, we know it to be even more prevalent than in the statistics I have given you) but among our children of high school age. While my general impression is that we are

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just now seeing the beginning of a swing toward more concern and more restrictive norms on this issue among young people, and perhaps among adults as well, we must recognize that the massive and sophisticated advertising campaigns, particularly on television, may do much to blunt this "natural correction."

Consider some of the mechanisms by which advertising is likely to influence consumption in general, and heavy consumption in particular.

1. It can influence perceptions of, and expectations about, what is normal or expected behavior. (Is everybody doing it?)

2. It can affect the perceived social acceptability of the behavior. (Is it OK to do it?)

3. It can influence the other social connotations of the behavior and perceived positive consequences. (What kinds of people do it? For example, are they all thin, handsome, vigorous, healthy, effective, socially "in" people? And also, is it fun to drink? Is it ever not fun?)

4. Advertising can draw attention away from the fact that there are negative consequences (like violence, suicide, automobile accidents, many other kinds of accidents, impaired work performance, family disruption, dependence, disease, and death from disease).

5. It can suppress media average of, or program content about, these negative outcomes, because the media fear retribution from such major advertisers. This is abundantly clear and well documented in the case of cigarette advertising in the print media. I suspect it is present but more subtle in the case of alcohol coverage in the broadcast media.

So, if I were asked what issues counterbalancing messages might address under a Fairness Doctrine arrangement, it would be all of these, plus a better understanding of the nature of the products. I add this last point because I believe that beer, in particular, is seen as somehow a less serious form of alcohol consumption, and it clearly is the predominant form among teenagers.

I am reminded of an early NIAAA prevention poster which contained a number of recently emptied beer glasses and read, "If you drink a lot of beer, you drink a lot." Such a message, which is all too accurate, casts a very different light on heavy beer consumption than the rosy one seen day after day in the beer commercials. Note that the electronic media do not carry any such message of moderation today. Their public service announcements focus almost entirely on not drinking and driving; and as important as that problem is, it is only one among the many that alcohol causes. In fact, it is my guess that the primary way in which we will be able to reduce even drunk driving is to reduce heavy drinking, and I do not see that goal being pursued by the media's current public service announcements.

As an aside, I should note that I am not sure whether the bill introduced by Representative Seiberling, which just reached my office last Friday, would permit the "balancing messages" by responsible spokespersons to deal with all of these issues, since it uses language which only speaks of "...messages or other programming regarding the various adverse effects on individuals, and the public generally, that may be attributable to alcoholic beverage consumption and misuse" (page 5, lines 4–7; page 7, lines 9–11). I would think a broader definition of the potential "abuse prevention" message content would be highly desirable if effective abuse prevention is what is being sought; and I assume it is.

Conclusion

What we have here, I believe, is an area where industry interests and the welfare of society are in serious conflict on an issue in which society has a very high stake. Not only is the user who misuses put at high risk of a number of serious outcomes, but so are the other members of society around him. And how we raise our children to think about this product has a great deal to do with whether they are likely to become misusers. Therefore, to have such a lopsided presentation of such a potentially dangerous product—especially to our children—as is occurring with much greater frequency today on radio and television, is not in society's interest in my opinion.

Opponents of legislative restrictions have tried to label the proponents as neo-prohibitionists, but I believe this is an inaccurate and unfair characterization. One can be—as I believe most citizens are—against alcohol abuse without being against alcohol use—and this it seems to me is what the Fairness Doctrine proposal is about. While not a member of any of the coalitions involved here, I can say as a citizen, as a parent, and as a social scientist who studies young people, that I believe a Fairness Doctrine approach constitutes the minimum degree of government intervention which can be justified in this case, and I think it long overdue.

Thank you very much, Mr. Chairman, and members of the Committee. I would be pleasedto try to answer any questions.

References

Johnston, L.D. and O'Malley, P.M. Why do the nation's students use drugs and alcohol? Self reported reasons from nine national surveys. Journal of Drug Issues, in press.

Johnston, L.D., O'Malley, P.M., and Bachman, J.G. Drugs and American high school students: 1975-1983. (National Institute on Drug Abuse), U.S. Department of Health and Human Services, Publication No. (ADM) 84-1317, 1984.

Miller, J.D. et al., National Survey on Drug Abuse: Main Findings 1982. (National Institute on Drug Abuse). U.S. Department of Health and Human Services, Publication No. (ADM) 83-1263. U.S. Government Printing Office, 1983.

Table 1
Trends in Use of any Alcoholic Beverages, and (Separately) of Beer, Wine, and Hard Liquor: High School Seniors from 1975-1984

(Entries are percentages)

Alcohol Measure	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Any Alcohol										
Use in Lifetime	90.4	91.9	92.5	93.1	93.0	93.2	92.6	92.8	92.6	92.6
Use in Past 12 Months . .	84.8	85.7	87.0	87.7	88.1	87.9	87.0	86.8	87.3	86.0
Use in Past 30 Days . . .	68.2	68.3	71.2	72.1	71.8	72.0	70.7	69.7	69.4	67.2
Daily Use	5.7	5.6	6.1	5.7	6.9	6.0	6.0	5.7	5.5	4.8
5 or more drinks in a row in past two weeks . . .	36.8	37.1	39.4	40.3	41.2	41.2	41.4	40.5	40.8	38.7
N	9400	15400	17100	17800	15500	15900	17500	17700	16300	15900
Beer										
Use in Lifetime	NA	86.9	88.1	89.0	88.7	89.3	88.8	88.5	89.1	88.4
Use in Past 12 Months . .	NA	75.2	77.0	77.0	79.3	78.2	78.0	76.4	78.4	76.7
Use in Past 30 Days . . .	NA	59.8	62.1	62.3	63.7	62.9	62.7	60.3	61.7	59.5
Daily Use	NA	5.8	6.7	6.6	6.8	7.8	6.0	6.8	6.2	5.3
5 or more drinks in a row in past two weeks . . .	NA	33.0	35.1	35.4	36.4	36.6	38.0	37.6	38.1	36.2
N	NA	2585	2662	3162	2830	2801	3168	3052	2754	2693
Wine										
Use in Lifetime	NA	85.4	86.7	87.2	85.4	87.9	86.4	85.8	87.7	85.4
Use in Past 12 Months . .	NA	67.0	69.0	69.3	68.2	71.4	68.7	68.5	68.8	67.1
Use in Past 30 Days . . .	NA	34.5	37.4	37.6	36.6	39.5	36.6	37.8	36.0	34.1
Daily Use	NA	1.0	1.2	0.8	0.7	0.8	0.7	1.0	0.8	0.7
5 or more drinks in a row in past two weeks . . .	NA	12.5	13.1	13.5	12.9	13.2	12.9	14.9	14.3	13.0
N	NA	2552	2654	3123	2806	2792	3152	3036	2754	2688
Hard Liquor										
Use in Lifetime	NA	79.8	81.3	84.4	82.3	83.7	82.5	83.7	83.8	82.1
Use in Past 12 Months . .	NA	69.2	69.8	72.4	71.7	73.3	70.7	70.6	72.0	67.6
Use in Past 30 Days . . .	NA	44.2	45.0	48.2	47.3	47.9	44.6	45.2	46.3	42.2
Daily Use	NA	1.7	1.7	1.3	1.9	1.5	1.5	1.8	1.7	1.7
5 or more drinks in a row in past two weeks . . .	NA	19.8	19.9	22.0	22.8	23.0	21.3	23.8	22.0	21.3
N	NA	2563	2662	3139	2798	2786	3148	3025	2747	2701

Note to Table 1: In most years a certain degree of inconsistency is observed when the daily use figures for beer are slightly higher than the daily use figures for all alcoholic beverages combined (of which beer is one component). We have three hypothesized explanations for this anomaly: (1) since questions about beer drinking occasions are asking about a more discretely defined activity, they may prompt a lightly better recall of events, most of which do in fact involve beer; (2) some small percent of respondents fail to consider beer to be an alcoholic beverage, despite our explicit instructions; and (3) respondents may be slightly more careless toward the end of the questionnaire, where the beer questions are located, and the resulting increase in random error would tend to increase measures of relatively "rare events," like daily drinking. If either of the first two hypotheses is true, it means that daily use of all alcohol beverages is slightly understated, not that daily beer use is overstated. The third hypothesis would suggest that daily beer use is slightly overstated. None of the explanations significantly alters the points made in the text, however.

Table 2
Trends in Beliefs and Attitudes about Alcohol, Peer Norms, and Exposure to Alcohol Use
(High School Seniors from 1975 to 1984)

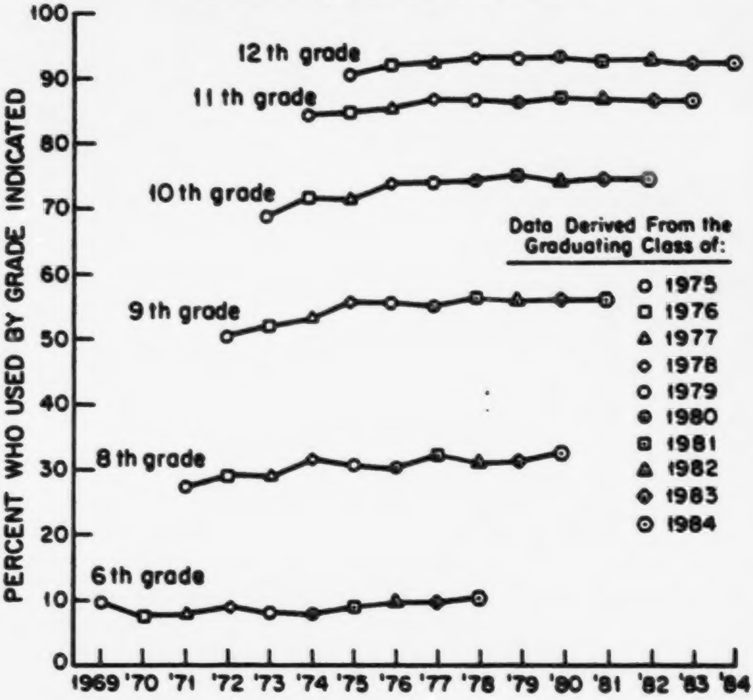
	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Q. How much do you think people risk harming themselves (physically or in other ways), if they										
	Percent saying "great risk"									
Try one or two drinks of an alcoholic beverage (beer, wine, liquor) . . .	5.3	4.8	4.1	3.4	4.1	3.8	4.6	3.5	4.2	4.6
Take one or two drinks nearly every day	21.5	21.1	18.5	19.6	22.6	20.3	21.6	21.6	21.6	23.0
Take four or five drinks nearly every day	63.5	61.0	62.9	63.1	66.2	65.7	64.5	65.5	66.8	68.4
Have five or more drinks once or twice each weekend	37.8	37.0	34.7	34.5	34.9	35.9	36.3	36.0	38.6	41.7
Q. Do you disapprove of people (who are 18 or older) doing each of the following? .										
	Percent disapproving									
Try one or two drinks of an alcoholic beverage (beer, wine, liquor) . . .	21.6	18.2	15.6	15.6	15.8	16.0	17.2	18.2	18.4	17.4
Take one or two drinks nearly every day	67.6	68.9	66.8	67.7	68.3	69.0	69.1	69.9	68.9	72.9
Take four or five drinks nearly every day	88.7	90.7	88.4	90.2	91.7	90.8	91.8	90.9	90.0	91.0
Have five or more drinks once or twice each weekend	60.3	58.6	57.4	56.2	57.7	55.6	55.5	58.8	56.6	59.6
Q. How do you think your close friends would feel about you										
	Percent saying friends disapprove									
Taking one or two drinks nearly every day	67.2	NA	71.0	NA	71.0	70.5	69.5	71.9	71.7	73.6
Taking four or five drinks nearly every day	89.2	NA	88.1	NA	85.5	87.9	86.4	86.6	86.0	86.1
Having five or more drinks once or twice each weekend	55.0	NA	53.4	NA	51.3	50.6	50.3	51.2	50.6	51.3

Table 2 (Continued)

	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
	Percent saying friends disapprove									
Q. How many of your friends would you estimate										
	Friends Using									
Drink alcoholic beverages .										
% saying none	3.3	4.9	5.6	5.1	4.6	3.9	5.3	4.3	4.5	5.4
% saying most or all . .	68.4	64.7	66.2	68.9	68.5	68.9	67.7	69.7	69.0	66.6
Get drunk at least once a week										
% saying none	17.6	19.3	19.0	18.0	16.7	16.9	18.2	16.9	16.1	18.5
% saying most or all . .	30.1	26.6	27.6	30.2	32.0	30.1	29.4	29.9	31.0	29.6
Q. During the LAST 12 MONTHS how often have you been around people who were taking each of the following to get high or for kicks? . . .										
	Exposure to Use									
Alcoholic beverages										
% saying not at all . . .	NA	6.0	5.6	5.5	5.2	5.3	6.0	6.0	6.0	6.0
% saying often	NA	57.1	60.8	60.8	61.2	60.2	61.0	59.3	60.2	58.7
N (Approx.)	2800	3200	3600	3800	3300	3200	3600	3600	3300	3300

FIGURE 1

**Alcohol: Trends in Lifetime Prevalence for Earlier Grade Levels
Based on Retrospective Reports from Seniors**



Mr. **Wirth**. Thank you very much, Dr. Johnston. We will include all of your statement in full in the record.

Our next witness is Mr. John DeLuca, president of the Wine Institute in San Francisco. Before undertaking that responsibility, Mr. DeLuca had a distinguished career in public service, including service in the Johnson White House.

Mr. DeLuca, thank you for joining us today.

STATEMENT OF JOHN A. DeLUCA

Mr. **DeLuca**. Thank you, Chairman Wirth and members of the subcommittee.

On behalf of the over 500 wineries and thousands of growers who comprise the wine growers of California, I thank you for the invitation to share our views and experience.

Our members represent over 90 percent of the wineries in our State, approximately 60 percent of all wine, foreign and American, sold in our Nation, and constitute the largest single voice for wine in the United States.

The Wine Institute represents a number of large firms, but our perspective is based on a predominantly rural, agricultural membership whose vast majority are small family operations.

At the outset, I want to acknowledge my personal indebtedness to Michael Jacobson of the Center for Science in the Public Interest. Every time the vintners in California have questioned the need for my services in the last 10 years, Michael has launched a new attack: ingredient labeling, cancer in wine, higher excise taxes, advertising bans. He has assured my professional status, has helped pass every one of my budgets. He has done more to bring the California growers and vintners together than even the French and Italians.

His last performance on "60 Minutes" even got me a raise.

My children and wife especially asked to send you best wishes, Michael.

As a general principle, we oppose advertising bans or counteradvertising of the kind introduced by Congressman John Seiberling. As a preferable alternative, we recommend self-regulation or such regulation petitioned by the industry, which by its nature draws inspiration and strength from private initiative and compliance.

In 1978, without activist, media, or Government prodding or pressure, the California wine industry, years before it was raised as an issue, voluntarily adopted our code of advertising. You have here just certain selected segments that have been put on these posters for your attention, but each one of you has a copy of its entire code, so rather than, as in the Hawkins hearings where I read most of it, I ask that you and your staff read it thoroughly.

In subsequent years, they have voluntarily adhered to the standards. I would like to stress this point. Key members of the coalition, that now comprise the SMART campaign and have brought you these petitions, have commended our commitment to responsible advertising and marketing practices, and we thank them publicly.

Dr. Luther Cloud, president of the National Council on Alcoholism, wrote in 1978, and I quote:

> By assuring that wine advertising will not be designed to appeal to young persons and will not glorify or misrepresent wine use, your industry has distinguished itself as a trend setter in addressing contemporary issues. The alcoholism movement is well served by such voluntary action, and we publicly applaud the Wine Institute for its initiative and example.

A year later, Mrs. Virginia Sparling, president of the National Parent Teachers Association, wrote:

> We commend The Wine Institute for its efforts to promote responsible advertising standards in your field, and we would especially commend eliminating appeals to young people.

Numerous similar expressions over the years, a small sample of which is in our exhibits which all of you members have, have acknowledged that we were not just talking but doing something effective in addressing the problems of under age drinkers and high risk consumers. Our entire educational program, not just our use of commercial air time and the print media, has opposed the presentation of wines as glamorous or necessary to social success or endorsed by athletes or other heroes of the young.

California wine advertising has stressed, instead, that wine should be a moderate accompaniment to food, which research shows that contributes to salutory drinking habits.

At this point I was going to show you commercials, Mr. Chairman and members of the committee. In the interest of time, let me just briefly describe them to you. We had an Almaden picnic scene, a Gallo home dining scene, and Italian Swiss Colony restaurant scene, wine and music by Taylor California Cellars, wine in the harvest by Gallo, and wine and art by Paul Masson. Perhaps during the question and answer period they might be shown, but I just simply want to save my time for other remarks.

Under a self-developed, self-policed code, our members have served the well-being of this country by portraying wine as a beverage of moderation to be used with food in a healthy manner. Numerous testimonials from alcoholism leaders attest to the fact that the California wine industry has made common cause with them on the drunk driving issue and is in the front ranks with those who combat alcohol abuse and alcoholism.

We submit that our advertising does not contribute to the problems of alcoholism, excessive drinking, underage drinking or drunk driving. We believe there can be no justification for banning or countering California wine advertising. The fairness doctrine carries an auxiliary principle of common sense. If you act responsibly, what warrant is there for an opposing warning.

There are individual instances of wine ads that have violated our code, and we join in the criticism they have received. I see I'm going to run out of time, but let me just conclude on this point. They were produced by non Wine Institute members.

I am pleased to announce today the adoption of our code by the New York and Washington wine growers and the American Association of Wine Grape Growers. I am also advised that the Association of American Vintners, representing 28 States east of the Mississippi River, this week will formally adopt the Wine Institute code. In the Far West, wine grower associations in Oregon, Idaho, and New Mexico are currently considering taking similar action.

Before the Congress adjourns for Memorial Day, without a new law or resolution, the wineries of America will have voluntarily adopted the Wine Institute's code.

In the interest of time, I just respectfully ask that the rest of my testimony be simply adopted by you for the record.

[The prepared statement of Mr. DeLuca follows:]

Testimony by
John A. De Luca
President, Wine Institute
before
House Subcommittee on Telecommunications,
Consumer Protection and Finance
May 21, 1985

Chairman Tim Wirth and Members of the Subcommittee

In behalf of the over 500 wineries and thousands of growers who comprise the Winegrowers of California I thank you for the invitation to share our views and experience on the subject of "Beer and Wine Advertising: the Impact of the Electronic Media."

Our members represent over 90% of the wineries in our state, approximately 60% of all wine, foreign and American, sold in our nation, and constitute the largest single voice for wine in the United States.

Wine Institute represents a number of large firms, but our perspective is based on a predominantly rural agricultural membership, whose vast majority are small family operations. We welcome this opportunity to address your committee and commend you for providing a forum for the presentation of facts, not widely known or available, and which would otherwise not be considered in the formulation of public advertising policy.

You have granted us five minutes. The most prudent use of that time is to discuss with you our voluntary Code of Advertising and to file with you ten exhibits, which document the support we have received on this initiative as well as others we have undertaken, such as those dealing with voluntary community programs and drunk driving issues.

As a general principle we oppose advertising bans, or counter-advertising, of the kind presently being debated. As the preferable alternative we recommend self-regulation, or such regulation petitioned by the industry, which by its nature draws inspiration and strength from private initiative and compliance.

In 1977, without activist, media, or government prodding or pressure, the California wine industry requested the Federal Trade Commission to review a proposed new Code to assure we conformed with anti-trust requirements. We received a favorable opinion, although with certain important admonitions I will discuss later. In 1978, years before it was raised as an issue, our members quietly adopted the Code. In the subsequent years they have voluntarily and scrupulously adhered to its standards.

Members of the coalition that now comprise the S.M.A.R.T. campaign have commended our commitment to responsible advertising amd marketing practices; and we thank them publicly. Dr. Luther Cloud, President of the National Council on Alcoholism, wrote in 1978: "By assuring that wine advertising will not be designed to appeal to young persons, and will not glorify or misrepresent wine use, your industry has distinguished itself as a trendsetter in addressing contemporary issues. The alcoholism movement is well served by such voluntary action, and we publicly applaud Wine Institute for its initiative and example."

A year later Mrs. Virginia Sparling, President of the National PTA, wrote, "We commend the Wine Institute for its effort to promote responsible advertising standards in your field, and we would especially commend eliminating appeals to young people."

Numerous similar expressions over the years have acknowledged that we were not just talking, but doing something effective, in addressing the problems of underaged drinkers and high-risk consumers. Our entire educational program, not just our use of commercial air time and the print media, has opposed the presentation of wines as glamorous or necessary to social success or endorsed by athletes or other heroes of the young. California wine advertising has stressed instead that wine should be a moderate accompaniment to food, which research shows contributes to salutary drinking habits. As the following brief examples of our television advertisements indicate California wineries have been reaching millions of Americans with tasteful and responsible messages.

Presentation of California wine commercials.

Under a self-developed, self-policed Code, our members have served the well-being of this country by portraying wine as a beverage of moderation to be used with food in a healthy manner. Numerous testimonials from alcoholism leaders attest to the fact that the California wine industry has made common cause with them on the drunk driving issue, and is in the front ranks with those who combat alcohol abuse and alcoholism.

We submit that our advertising does not contribute to the problems of alcoholism, excessive drinking, underage drinking, or drunk driving. We believe there can be no justification for banning or countering California wine advertising. The Fairness Doctrine carries an auxilliary principle of common sense: If you act responsibly what warrant is there for an opposing warning?

There are individual instances of wine ads that have violated our Code, and we join in the criticism they have received. But they were produced by non Wine Institute members. On this point, I am pleased to announce today the adoption of our Code by the New York and Washington winegrowers. I am also advised that the Association of American Vintners, representing twenty-eight states east of the Mississippi River, this week will formally adopt the Wine Institute Code. In the Far West Winegrower Associations in Oregon, Idaho and New Mexico are currently considering taking similar action. In the question period I am prepared to discuss how we police the Code and those rare instances in eight years which led to the dropping of certain ads.

If our positive record of years of self regulation is ignored a great injustice will be imposed. The proponents of advertising restrictions and controls have got to come to grips with our conduct and not their rhetoric. They simply cannot discredit or dismiss it in the heat of advocacy.

If the Administration and Congress deny the California wine experience other industries, such as the auto, salt and sugar industries, will be dissuaded from responsible self-restraint. For example, following the May 5, 1985 segment by "60 Minutes" on the "Campaign to Ban Beer & Wine Ads," the letters in opposition to such controls which were reprinted on the May 12 program, drew attention to such problems as obesity and food commercials and the role of automobiles in our society. Automobiles, driven recklessly are dangerous objects. Today's media advertising for automobiles often stresses high performance and sportiness. Should we, therefore, ban media advertising of automobiles?

CSPI spokesmen in recent months have charged that while wine ads are "innocuous" wine can be abused; and, therefore, there is need for opposing commentary. The flawed logic at work here is that such thinking leads to the conclusion that if a product can be abused then even its moderate behavior or responsible presentation must be indicted. A whole array of products, now advertised, are vulnerable to the quagmire contained in that reasoning. How the federal government handles the issue before this committee will have obvious implications for many other industries.

In conclusion, we believe strongly in voluntary self-regulation; but we also acknowledge that, while we constitute the majority, there is not universal vintner commitment. We are encouraged by recent developments on the part of American wineries, and trust there would be similar movement by foreign producers. But to guarantee total participation Wine Institute proposed in 1979 and 1981 — again long before the CSPI campaign — that the Bureau of Alcohol, Tobacco and Firearms make mandatory our Code for all vintners, American and foreign.

This position emerged as a consequence of the FTC stance that we could not enter into negotiations with media and vintner organizations to extend the California Code to the remainder of the industry. We are aware, of course, that the present Administration is currently debating its regulatory policies as they apply to this subject.

In our view, therefore, the most constructive act that can be taken by your committee, on the subject of wine advertising, is to assist us in encouraging the Administration to adopt our Code as a regulation for all wine advertisers.

In this effort, we respectfully solicit your support.

United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, FIRST SESSION

Vol. 131 WASHINGTON, MONDAY, FEBRUARY 18, 1985 *No. 14*

Senate

MONDAY, FEBRUARY 18, 1985

TRIBUTE TO WINE INSTITUTE'S CODE OF ADVERTISING STANDARDS

● Mrs. HAWKINS. Mr. President, on February 7, 1985, as chairman of the Senate Subcommittee on Alcoholism and Drug Abuse, I conducted a hearing on the issue of beer and wine advertising on radio and television. I received extensive testimony from representatives of Federal agencies, community and research organizations, consumer groups, brewers, vintners, broadcasters, advertising associations, university and constitutional scholars.

The materials and opinions presented to the subcommittee reveal divergent views on a most complex and important subject. More hearings appear warranted. At the outset of what promises to be a sharpening debate over public policy and advertising I believe it timely that I share with my colleagues an initial finding that most impressed me.

I found that voluntary Code of Advertising Standards adopted by the California wineries in 1978, through their industry organization, the Wine Institute, to be exemplary in its provisions and practice. As an example of private initiative the code stands as a model of social responsibility which deserves wider support and recognition.

The self-developed and self-policed advertising ethics have received high praise over the years from many local, State, and Federal leaders representing Government, public health, alcoholism, and community organizations. As a small example of this widespread support I would like to cite only a few of the commendatory letters that have come to my attention. In April 1978, Rita Saenz of the California Office of Alcoholism greeted the new standards with this letter to John De Luca, president of the Wine Institute:

> On behalf of the many diverse elements within the alcoholism constituency, please accept my congratulations on a very positive and forthright set of standards . . . and my compliments for your efforts toward social responsibility.

At the same time, Luther Cloud, then president of the National Council on Alcoholism, wrote:

> We believe the social significance of this Code will be recognized across the nation by alcoholism councils . . . . By ensuring that wine advertising will not be designed to appeal to young persons, and will not glorify or misrepresent wine use, the [California] wine industry has distinguished itself as a trendsetter in addressing contemporary issues. The alcoholism movement is well served by such voluntary action, and we publicly applaud Wine Institute for its initiative and example.

A year later, Mrs. Virginia Sparling, then President of the National PTA, included the following message in her communication:

> We commend the Wine Institute for its effort to promote responsible advertising standards . . . . and we would especially commend eliminating appeals to young people.

The Federal Trade Commission, in an advisory opinion in antitrust matters, has not encouraged Wine Institute to seek parallel guidelines from media organizations or noninstitute wineries, American and foreign. This has prompted the association to petition the Bureau of Alcohol, Tobacco, and Firearms to adopt its code as a mandatory regulation for all parts of the wine industry.

The most salient parts of the code, which addressed the major concerns of my subcommittee, merit publication:

> 1. A distinguishing and unique feature of wine is its traditional use with meals. Subscribers to the Code shall show foods available to be used or intended to be used in ads where wine is served.
>
> 2. Wine advertising should encourage the proper use of wine. Code subscribers shall not show: Consumption of wine for the effects its alcohol content may produce; excessive drinking as a subject for amusement, or appearances of persons who have lost control; and wine used in conjunction with feats of daring or activities requiring unusual skill.
>
> 3. Any attempt to suggest that wine directly contributes to success or achievement is unacceptable and the following restrictions apply: Wine shall not be presented as being essential to personal performance, social achievement, success, or wealth; wine shall not be associated with social, physical or personal problem solving; and wine shall not be represented as vital to social acceptability or crucial for successful entertaining.
>
> 4. Any advertisement which has particular appeal to persons below the legal drinking age is unacceptable and code subscribers shall not: Show models and personalities in advertisements who appear to be under 25 years of age; use music, language, gestures or cartoon characters specifically associated with or directed toward those below the legal drinking age; appear in children's or juvenile's magazines, newspapers, television programs, radio programs or other media specifically oriented to persons below the legal drinking age; be presented as being related to the attainment of adulthood or associated with "rites of passage" to adulthood; suggest that a wine product resembles or is similar to other beverages with particular appeal to persons below the legal drinking age; use traditional heroes of the young such as those engaged in pastimes and occupations having particular appeal to persons below the legal drinking age (for example, cowboys, race car drivers, rock stars, etc.); and use amateur or professional sports celebrities, past or present.
>
> 5. Wine advertising should in no way suggest that wine be used in connection with driving.
>
> 6. Wine advertising by code subscribers shall not appear in or directly adjacent to television or radio programs or print media which dramatize or glamorize over-consumption or inappropriate use of alcoholic beverages.

The Wine Institute has been at the forefront of many contemporary issues. In addition to its leadership on advertising matters it has called for tougher law enforcement against drunk driving offenders, and last year supported enactment of the 21-year requirement for the purchase and public possession of alcoholic beverages. For this and many other initiatives I wish to commend the leadership and efforts of John De Luca, president of Wine Institute, and his entire membership for their enlightened, responsive, and exemplary approach.●

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Mr. WIRTH. Thank you very much, Mr. DeLuca. That will be included in full in the record.

Our next witness is Barry Lynn, legislative counsel of the American Civil Liberties Union in Washington.

Mr. Lynn, thank you.

STATEMENT OF BARRY W. LYNN

Mr. LYNN. Thank you. There are two different sets of reasons advanced for new regulation of alcohol advertising. The first raises very serious free speach issues. That is the view of some critics of current advertising who embrace the idea of generic deception, that somehow all commercials for beer and wine on television are inherently misleading. For example, one section of the equal time bill would declare congressional belief that advertisements promoting alcohol consumption "associate such consumption with happiness, prestige, popularity, and the attainment of a glamorous lifestyle."

Such a legislative finding of implied content or hidden messages is very dangerous when it is linked to broad governmental regulation. With a few minor changes, that description could apply to virtually any advertisement. After all, no advertising is designed to convince viewers that use of their product will make them unattractive or miserable.

In fact, New York unsuccessfully tried to make an implied content argument to support a ban on the advertisement of contraceptives. The Supreme Court correctly rejected the claim that contraceptive advertisement covertly legitimatized the sexual activity of minors.

I think it is always perilous to free expression to regulate speech on the basis of these very speculative claims of the nearly subliminal influence of certain kinds of speech. This is particularly true since existing data does not even support the proposition that advertising significantly increases alcohol consumption. It certainly cannot document the contention that the advertising causes persons to abuse the use of alcohol. Likewise, no data supports the intent of alcohol producers to have persons actually use alcohol unlawfully or excessively.

Now, the equal time bill also asserts a separate Government interest in simply expanding the universe of information about the use of the product, including information from those who dispute any or all of the claims of the alcohol advertisers. This we find to be a legitimate Government interest even absent any proof that advertising causes antisocial conduct.

But there are several ways to reach this goal. We believe the best way is through the fairness doctrine which merely obligates broadcast licensees to devote a reasonable amount of air time to various viewpoints on controversial issues of public importance.

We believe the fairness doctrine should be applicable to those product commercials which in fact raise a controversial issue of public importance in the community in which they are aired.

The equal time bill is a far greater restriction on legitimate first amendment rights of broadcasters. The public regularly hears the cries of "wolf" from broadcasters whenever the most modest effort

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is attempted to guarantee that they will function in the public interest. But sometimes, just sometimes, the wolf is really there, and this equal time bill is such a case. This bill might be characterized as a ban in sheep's clothing.

The fairness doctrine is not an equal time law requiring exact one-to-one equivalency and dictated form of response. But the rigidity of the response required in this proposed bill eliminates the very flexibility which makes the fairness doctrine a viable and creative balance between the first amendment rights of broadcasters and those of the public.

The fairness doctrine is invoked quite properly only where there is a live controversy. This equal time bill federalizes controversy by determining that one specific issue must be discussed by local broadcasters regardless of the form or extent of actual community controversy about alcohol.

Likewise, the ACLU has generally supported the Cullman rule that a broadcaster is obligated to provide free opportunities for response time if paid sponsorship cannot be found.

But the equal time bill again takes the broadcasters far beyond the requirements of Cullman. It creates such extreme sanctions for the advertising of alcohol that it could become the functional equivalent of a ban. It will be extremely costly because of its emphasis on precise equivalency. A one to one equivalency approach could present awesome financial burdens, particularly for smaller and minority-owned stations.

The cost of broadcasting the advertising of alcohol producers could become so high when combined with donating of counteradvertising time that no alcohol ads would be broadcast. In addition, this bill strongly suggests that the burden is on the licensees to go out and search for people who can speak of the adverse effects and guarantee them air time.

So under some readings of this bill, if antialcohol groups decided that they were not interested in producing counteradvertising, the alcohol advertisers would not be able to get on the air and we would have an advertising hecklers' veto.

In conclusion, let me just say that many people sincerely believe that there are certain images in broadcasting that captivate the unwary and lead them astray. Nobody would suggest that alcohol advertising plays no role in alcohol abuse, but there's also nothing magical about these ads. Literally millions of Americans exposed to them not only do not abuse alcohol but really never take the first drink.

We just cannot suspend the first amendment because of the unintended impact that some image or idea or commercial might have on the most suggestible person in the audience who sees it. Thank you.

[Testimony resumes on p. 412.]

[Mr. Lynn's prepared statement follows:]

TESTIMONY OF
BARRY W. LYNN
LEGISLATIVE COUNSEL

AMERICAN CIVIL LIBERTIES UNION

Chairman Wirth and Members of the Subcommittee:

The American Civil Liberties Union (ACLU) appreciates the opportunity to testify today regarding federal regulation of alcohol advertising. The ACLU is a national non-partisan organization of 250,000 members dedicated to defending the principles embodied in the Bill of Rights. For over sixty years the ACLU has sought to preserve and strenghten the First Amendment as a bulwark against all forms of government censorship.

Although we believe that the broadcast ban on alcohol advertising advocated by some groups is inconsistent with First Amendment values, we likewise reject the view expressed by some in the advertising, brewing and broadcasting industries that virtually no governmental regulation of alcohol advertising is justified. Specifically, the ACLU believes that the Congress should statutorily modify current Federal Communications Commission (FCC) restrictions on the applicability of the Fairness Doctrine to commercial product advertising. This would then become an adequate remedy where advertising of alcohol or any other product becomes an actual issue of controversy in a local broadcast market. (The ACLU generally feels the Fairness Doctrine is also applicable to cable television operators.) H.R. 2526, which seeks to mandate "equal time" for counter-advertising solely about alcohol, goes well beyond the scope of the Fairness Doctrine and violates legitimate First Amendment rights of broadcasters.

Constitutional Issues in Alcohol Advertising Regulation

There is no question that this nation has a serious problem with alcohol abuse, and it may be manifested in a variety of ways: juvenile alcoholism, drunk driving, spouse or child abuse, and serious alcohol-related diseases. Nevertheless, the existence of these problems does not alone justify extreme measures which would abridge constitutionally-protected values. There is a long history in the United States of efforts to regulate alchol. No other product has prompted two constitutional amendments. However, the Supreme Court has made it very clear that the power of the state to regulate alcohol is limited by the existence of other constitutional guarantees. *Craig* v. *Boren* 429 U.S. 190 (1976) (sex-differentiated drinking age is forbidden under equal protection guarantee of Fourteenth Amendment); *Wisconsin v. Constantineau* 400 U.S. 43d3 (1971) (strict due process required before posting notices that alcohol sale should be prohibted to certain individuals alleged to be alcohol abusers; *Larkin v. Grendel's Den Inc.* 103 S. Ct. 505 (1982) (Establishment Clause limited state liquor zoning statute which effectively gave veto power over bar locations to local churches).

The Supreme Court cannot accurately be said to have passed on the issue of the compatability of alcohol advertising bans and the First Amendment. There was a summary dismissal for lack of a substantial federal question, 103 S. Ct. 31 (1982), in *Queensgate Investment Co. v. Liquor Control Comm.* 69 Ohio St. 2d 361, 433 N.E. 2d 138, upholding a state restriction on off-premises alcohol advertising. Similarly, the Court reversed, on narrow premption grounds, ____U.S.____ (1984), the decision in Oklahoma Telecasters Assn. v. Crisp 699 F.2d 490 (10th Cir. 1983), an alcohol ad ban effecting broadcasting originating in or carried over cable systems in the state. Neither can be said to resolve the First Amendment claims of alcohol advertisers.

A majority of the Supreme Court in Metromedia, Inc. v. City of San Diego 453 U.S. 490 (1984) was willing to uphold a content-neutral state ban on billboard advertising, in part because of the legislative judgement that "billboards are real and substantial hazards to traffic safety." The real concern was that people would observe the billboards, and not watch the road in front of them. There is no comparable danger in looking at any segment of broadcasting time devoted to alcohol, unless you are watching it while driving. The Court's willingness to accept the legislative judgment about the practical danger of billboards does not mean they will accept every non-content-neutral advertising regulation created by a legislative body. This is particularly true where the asserted "danger" is not directly from the regulated material, but only from the particular manner in which some viewers assimilate and act upon the message in an advertisement.

During the past year, a coalition of organizations calling itself "Stop Marketing Alcohol on Radio and Television" (SMART) has urged Congress and the Federal Trade Commission to craft a federal ban on broadcasting of all advertising for alcoholic beverages. Enacting such a legislative or regulatory ban, or otherwise inordinately regulating the broadcasting of alcohol advertising, would clearly violate the free expression guarantees of the First Amendment for advertisers and their audience. Although prior to 1976, the courts had provided only limited First Amendment protection to so-called "commercial speech", any simple Constitutional distinction between "commercial" and "non-commercial" speech has been eliminated in several landmark decision including Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council 425 u.s. 748 (1976) (rejecting a state ban on publishing prices for prescription drugs); and Central Hudson Gas and Electric Corp. v. Public Service Commission 447 U.S. 557 (1980) (invalidating broad regulation banning promotional advertising by an electrical utility).

Any proposed ban or new federal regulation of any advertising must be scrutinized in light of the test articulated in Central Hudson:

> At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that protection, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

Clearly, drinking alcohol is a generally "lawful" activity. Although it is illegal for persons under the drinking age established by a state to purchase alcohol, it is likewise unlawful for minors to use other products, including automobiles, regularly advertised in the broadcast media. As the Supreme

Court observed in Butler v. Michigan 352 U.S. 380 (1957), in the obscenity context, if materials are banned just because minors might see them "the result is to reduce the adult population... to reading what is fit for children". Likewise, here, those lawfully entitled to drink alcohol may not be denied information about its availability simply because the message also reaches those who cannot drink.

Individual alcohol advertisements could be "misleading". If specific claims are made in individual advertisements-"drinking Brand X will cure baldness" or "drinking Brand Y guarantees a higher batting average"- which persons feel are untrue, it is presently possible to file complaints about them with the Federal Trade Commission. If successful, this process can lead to their removal from the media. It presents no First Amendment problem to have the burden placed on the advertiser in such a situation to prove his claim in a hearing which affords him full due process.

However, some critics of current alcohol advertising seem to embrace the idea of "generic deception", that all commercials for beer and wine are inherently "misleading". For example, Sec. 2 (a) (7) of H.R. 2526 notes that advertisements promoting alcohol consumption "associate such consumption with happiness, prestige, popularity, professional success, athletic prowess, security, and attainment of a rewarding, glamorous lifestyle, but...are silent as to the problems related to alcohol consumption and misuse". The two elements of alleged misrepresentation are the "hidden messages" in the ads and the "failure to warn".

This kind of analysis can become dangerous when linked to broad governmental regulation. With a few minor changes, the description in Sec. 2(a)(7) could apply to virtually any advertisement. All product advertising suggests that a particular product is "good" and that people should purchase and use it. No advertising is designed to convince viewers that use of a product will make them unattractive and miserable. No constitutionally or intellectually serious distinction can be drawn solely on the basis of what is "associated" with alcohol and what is "associated" with portrayal of virtually every other commercial product.

The state of New York unsuccessfully tried to make an "implied content" argument to support a state ban on the advertising of contraceptives. The Supreme Court in Carey v. Population Services International 431 U.S. 678 (1977) correctly rejected the claim that contraceptive advertisements covertly legitimatized sexual activity of minors. In the debate over alcohol advertising, there are frequent claims that the "hidden message" conveyed is that teenagers should drink, that it is good to drink while engaging in dangerous athletics, that persons should drink large quantities of alcohol, on a myriad of other dangerous ideas. Yet, it is perilous to free expression to regulate speech on the basis of these speculative claims of the nearly subliminal influence of certain kinds of speech.

Similarly dangerous to free expression interests is the assumption that every commercial speaker is obligated to give, not only his side of the issue, but everybody else's. It is impractical and unwise to expect a single speaker, commercial or otherwise, to be responsible for conceding every "problem" associated not only with the use, but also the abuse, of his product or idea. Mechanisms like the Fairness Doctrine exist precisely to allow the contrasting viewpoints of other speakers to be heard in the broadcast media. The Congress has not indicated any interest in stopping use of alcohol *per se*. Therefore, there is a government interest in regulating alcohol advertisements under the *Central Hudson* test only if there is credible evidence that removal of such ads would "advance" the combatting of abusive use of alcohol. The ACLU can support so-called "commercial speech" restrictions genuinely warranted by a "public interest in health and safety".

However, existing data does not even support the proposition that advertising significantly increases alcohol consumption. Even the 1981 Michigan State University Study by Charles Atkin and Martin Block which found a 10 percent increase in alcohol consumption after heavy exposure to alcohol advertising would not support a claim that all, or even most, persons were influenced by such advertising. It certainly cannot document the contention that the advertising causes persons to abuse the use of alcohol. As the Court in *Corey* indicated, nothing in the advertisements for contraceptives could "even remotely be characterized as 'directed to inciting or producing imminent lawless actions or... likely to make or produce such action' Likewise, here, no data supports the intent of alcohol producers, advertises or broadcasters to have persons use alcohol unlawfully or excessively. So although there is clearly a substantial governmental interest in stopping drunk driving, juvenile alcoholism, and family abuse, there is no support for the idea that advertising regulation will address those problems.

The Interest in "More Speech"

Sections 2(b)(1),(2), and (3) of H.R. 2526 assert a somewhat different governmental interest in addressing alcohol advertising. It is not directly critical of the content of existing advertising. Rather, it asserts the value of an increase in the overall level of information about the use of the product, including information from those who dispute any or all claims of the advertisers. In other words, there may be a separable interest in expanding the kinds of opinions about alcohol (or other products) which are available in the broadcast media, notwithstanding the absence of any "proof" that present advertising causes anti-social conduct or overindulgence. This is an interest with which the ACLU concurs, one we feel broadcast licensees and cable operators are obligated to recognize as they operate.

The ACLU is a strong supporter of the intent of the Fairness Doctrine. This policy, an outgrowth of the "public trustee" concept of broadcast regulation, simply expresses two duties on the part of broadcasters. First, licensees have an affirmative obligation to devote a "resonable amount" of air-time to the discussion of "controversial issues of public importance". Second, once broadcasters cover one side of a controversial issue, they must also afford a "reasonable opportunity" for contrasting viewpoints to be heard.

In our view, the Doctrine applies to all broadcast programming, as well as commercial advertising. In 1967, the FCC had endorsed this view in regard to the advertising of cigarettes, in an opinion upheld in *Banzhaf* v. F.C.C. *405 F. 2d 1082* (D.C. Cir. 1968), *cert denied sub. nom. Tobacco Institute v. F.C.C.* 396 U.S. 842 (1969). The FCC felt that cigarettes posed a "unique" public health hazard. Consequently, they rejected a similar "fairness" complaint raised by Friends of the Earth, an enviromental group, that advertisers of large-engined automobiles raised a "controversial issue of public importance". The D.C. Court of Appeals, however, reversed the F.C.C in *Friends of the Earth v. F.C.C*, 146 U.S. App. D.C. 88, 449 F. 2d 1164 (D.C. Cir. 1971), finding the danger of air pollution from large cars virtually indistinguishable from that of smoking. Faced with the prospect of more commercial "fairness" complaints, the FCC in 1974 adopted the position that: "We believe that standard product commericals, such as the old cigarette ads, make no meaningful contribution toward informing the public on any side of any issue". *In the Matter of The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act*. 48 F.C.C. 2d 1, 30 R.R. 2d 1261 (1974). If anything, the Commission has since taken an increasingly hard-line against any triggering of the Fairness Doctrine by " standard product commericials". The power of the FCC to make such a determination has, regrettably, been upheld by two federal appeals courts. *National Citizens Commission for Broadcasting v. FCC*, 186 U.S. App. D.C. 102, 567 F. 2d 1095 (1977), *cert. denied*

436 U.S. 926 (1978); Public Interest Research Group v. FCC 522 F. 2d. 1060 (1st Cir. 1975).

A Ban in Sheep's Clothing?

We believe the Fairness Doctrine should be applicable to those product commercials which in fact raise a "controversial issue of public importance" in the community in which they are aired. One of the reasons the doctrine works, without voluminous litigation and without undue intrusion into the constitutional rights of broadcasters, is that viewers and listeners who reside within a broadcaster's market are often able to negotiate reasonable settlements which ensure that difficult issues in the locality are examined from several perspectives.

H.R. 2526 represents a substantially different approach than the Fairness Doctrine. It is a far greater restriction on legitimate First Amendment rights of broadcasters. The public regularly hears the cries of "wolf" from broadcasters whenever the most modest effort is attempted to guarantee that they will function in the "public interest." Sometimes, of course, the "wolf" is actually there. This is such a time. H.R. 2526 might be characterized as a "ban in sheep's clothing."

It is important to look at how the approach in this bill differs from the Fairness Doctrine:

(1) The Fairness Doctrine is not an "equal time" rule. It merely calls for broadcasters to provide "reasonable" access for contrasting viewpoints to be heard. The F.C.C. has never mandated any exact equivalency. (In a Broadcast Bureau staff opinion in Radio Station KKHI, ____F.C.C. 2d.____, 47 R.R. 839, a 1:5 ratio was determined to be unreasonable on its face.)

H.R. 2526 requires "equivalent broadcast time," Sec. 3 (a), which is defined in Sec. 3 (d)(3)(a) as of "equal duration to that used for broadcasting the alcoholic beverage advertisement."

Likewise, the Fairness Doctrine does not mandate the form in which any response is to be made. The format of response time is chosen by the broadcaster, and compliance with the Doctrine can be demonstrated in the overall program schedule.

Section 3(d)3(B) of H.R. ____ poses the considerably more exacting standard of requiring that the response appears "at a time and has an audience size and composition approximately equivalent to that used for broadcasting" the original advertisement.

The rigidity of the "response" required in the proposed bill eliminates the very flexibility which makes the Fairness Doctrine a viable and creative balance between the First Amendment rights of broadcasters and the public.

(2) Under Section 3(a) of H.R. ____ the federal government decrees that a local broadcaster is barred from presenting any alcohol advertising unless equivalent time is "made available" for responsible spokespersons to discuss "various adverse effects" of alcohol consumption on individuals and the public. This federal standard is present regardless of the form or extent of actual community controversy about alcohol.

The Fairness Doctrine is invoked, quite properly, only where there is a live controversy. It does not "federalize" controversy by determining what specific issues ought to be discussed by local broadcasters.

(3) The ACLU has generally supported the so-called "Cullman Rule" as a corollary to the Fairness Doctrine. This rule notes that a broadcaster is obligated to provide free opportunities for a response time if paid sponsorship of alternative viewpoints cannot be found.

H.R. 2526 takes broadcasters far beyond the requirements of "Cullman". In two ways it creates such extreme sanctions for the advertising of alcohol that it could become the functional equivalent of an outright ban.

First, the proposal will be extremely costly because of its emphasis on precise equivalency. During that period prior to 1974 when product commercials could trigger the Fairness Doctrine, broadcasters prophesized financial disaster through the "donation" of counter-advertising time. This was at a time when the F.C.C. had concluded that licensees would be required to air anti-smoking messages only in a fairly modest 1:5 ratio with cigarette commercials. National Broadcasting Company 16 F.C.C. 2d 947 (1967). Cigarette advertising resulted in approximately 8% of network advertising revenues at that time. It is clear that a 1:1 equivalency approach for beer and wine advertisements (which may generate an even higher percentage of revenues than cigarettes did) and "health warning" could present a far more awesome financial burden. This is particularly true if the counter-advertising was essentially gratis, another likely assumption in light of the relatively limited resources available to alcohol critics. The cost of broadcasting the alcohol advertising could become so high that they would simply not be allowed to air, thus not triggering the statute.

Second, the bill strongly suggests that the burden is on the licensees to go out and search for people who can speak of the "adverse" effects and guarantee them airtime. Section 3(b) can readily be construed to mandate that licensees "ensure" that the anti-alcohol time be used, and Section 3(a) informs broadcasters that if it is not used, no alcohol advertising can be aired. Under this construction of the statute, if anti-alcohol groups decided they were not interested in producing counter-advertising, the alcohol advertisers would be unable to get on the air. This amounts to an "advertising heckler's veto". If this is not the intention of the bill, it should at least be clarified to condition alcohol advertising on providing the "opportunity" for use, without requiring that the broadcaster "ensure" its actual use.

The proposed legislation also contains another anomolous feature. Section 3(d) (1) broadly defines "alcoholic beverage advertisement" to include "any message or other programming...intended to promote the purchase or consumption of any alcoholic beverage, and for which...consideration..is...paid" the broadcaster. It then exempts any message limited to sponsor identification by means of a "business or institutional logogram". This essentially permits beer or wine advertisers to have bland advertisements as long as they want. They are penalized, however, as soon as any information beyond brand-name is conveyed. Even those commercials which emphasize the low level of alchohol in their product, or which explicitly urge that persons not drive after drinking will still be alleged to "promote the purchase or consumption" of alcohol and will warrant equivalent time.

If the principles embodied in H.R. 2526 are valid for alcohol, groups will certainly be able to make parallel arguments about anti-social and dangerous conduct connected to the abuse of other products including automobiles and over-the-counter drugs. Those who see health hazards in the use of sugared cereals, artificial sweetners, meat preservatives, eggs, laundry detergents, and a myriad of other products will all approach Congress for federally-mandated, nationally-imposed "equal time" to promote their beliefs. Soon, the nation's airwaves will be so filled with advertisements and counter-advertisements, there will not be time for any plrogramming at all. This result might please many people, of course, who find current television serials, rock music, childrens' cartoons, and virtually everthing else on the air filled with morally offensive images or politically wrong-headed ideas.

There is a strong tendency these days for persons to attempt to suppress those images they dislike. One cannot help but feel that some who promote new federal initiatives against alcohol advertising really object to the "lifestyle" portrayed there. This is perfectly reasonable, but such "moral" objections provide an insufficient and constitutionally impermissable basis for effectively eliminating advertising for a whole class of products.

Likewise, many persons sincerely feel that certain images in magazines or broadcasting captivate the unwary and lead them astray. No one would suggest that alcohol advertising never plays any role in alcohol abuse. However, there is also nothing "magical" about alcohol advertising. Literally millions of Americans exposed to these advertisements on a daily basis, not only do not abuse alcohol, but never take even one drink. We cannot suspend the First Amendment because of the unintended impact some image, idea, or commercial has on the most suggestible person who sees it. Rigid regulation of alcohol advertising could deny information about the availability of products to those who might want them, without demonstrably reducing the anti-social conduct associated with the abuse of those product.

Mr. WIRTH. Thank you very much. And our final witness is Mr. Donald Shea, who is accompanied by Mr. James Tito, chairman of the Brewery Industry Task Force, and Mr. Stephen Lambright, vice president of Anheuser-Busch. Mr. Shea is president of the United States Brewers Association here in Washington. Mr. Shea.

STATEMENT OF DONALD B. SHEA

Mr. SHEA. Thank you, Mr. Chairman, and members of the committee. We have prepared a lengthy statement which we would respectfully request be incorporated into the hearing record this morning.

Mr. WIRTH. Without objection.

Mr. SHEA. With me are Mr. Stephen K. Lambright, vice president and group executive of Anheuser-Busch Cos., and James L. Tito, executive vice president, Latrobe Brewing Co. They have brief presentations for the committee.

Mr. Lambright.

STATEMENT OF STEPHEN K. LAMBRIGHT

Mr. LAMBRIGHT. Mr. Chairman and members of the subcommittee, thank you. In the interest of time, I respectfully request that my testimony and that of the Miller Brewing Co. be entered in as a part of the hearing record. We would like to share with you two commercials introduced this year by Anheuser-Busch. These paid ads—and I want to underscore paid; they are not public service announcements—will create at least 500 million prime-time viewer impressions during 1985 via all of the networks.

In addition, some of the local broadcasters are running them as public service announcements. I would like to show you these two ads at this time.

[Video presentation.]

"Know When To Say When"

PRODUCT: Operation ALERT
FILM NO.: AUAA1007
TITLE: "Tavern, Jr."

Television Advertising Campaign

STEVE GARVEY: Good friends and good sense...

make for a good time.

So when it's party time...

know when to say when.

KNOW WHEN TO SAY WHEN
Anheuser-Busch, Inc.

A reminder...

KNOW WHEN TO SAY WHEN
Anheuser-Busch, Inc.

from Anheuser-Busch.

Anheuser-Busch has begun a prime-time network television advertising campaign urging consumers to be responsible when they drink alcoholic beverages. The commercials will be aired during major holiday periods in 1985, and will generate approximately 500 million viewer impressions throughout the year.

The first two of these commercials, which featured San Diego Padres first baseman Steve Garvey, aired on all three networks during St. Patrick's Day weekend.

The commercials are designed to remind normally responsible consumers not to overindulge during the holiday celebrations, either at home or "out on the town." Garvey tells viewers, "Good friends and good sense make for a good time. So when it's party time, know when to say when." The Anheuser-Busch corporate logo is seen at the end of each commercial. However, the company's beer brands are not mentioned.

Mr. Tito. Good morning. Since the 1940's, the brewing industry has had voluntary guidelines. We still need the proper standards for beer advertisements.

Further, there has been a brewing industry advertising review panel to evaluate advertising and to help assure the propriety of all beer advertisements. The voluntary guidelines are revised periodically in order to reflect the changing nature of the brewing industry and the American society which it serves.

Beginning in February 1984 the brewing industry participated in yet another update of these standards. To give you an example of the code, the first of 20 guidelines reads, "Beer advertisements should never suggest nor encourage overindulgence." To assure strict adherence to this standard, no depiction of oncamera drinking is permitted.

Another guideline specifically prohibits beer ads from condoning, either explicitly or implicitly, drunk driving. The code has long discouraged ads directed toward the young. For example, the guidelines state explicitly beer advertising should neither portray nor encourage drinking by individuals below the legal age of purchase. And also, no beer advertisement should in any way suggest noncompliance with legal age purchase limitations.

A complete set of the brewing industry advertising guidelines has been submitted to the committee. Rather than imposing either counteradvertising or a total ban, we would request that the Congress accept our commitment to vigorous industry self-regulation. Thank you.

Mr. Shea. Mr. Chairman, the current controversy over broadcast advertising of both beer and wine has been dominated by emotion, conjecture and personal opinion. This discussion has centered more on the propriety of drinking rather than on whether beer and wine commercials lead to misuse of these products. These current high emotions threaten to obscure the facts provided both by the marketplace and by scientific research.

Just last month, the Federal Trade Commission denied a petition which called for further restrictions ranging from a ban on alcohol beverage advertising to mandated counteradvertising. In conjunction with this ruling, the FTC released a comprehensive staff report which determined that, "The literature regarding the quantitative effect of alcohol advertising on consumption and abuse found no reliable basis to conclude that alcohol advertising significantly affects consumption, let alone abuse." This FTC staff report reviewed 66 references dealing with the effects of advertising.

In addition to this scientific research, the marketplace has not supported the contention that increased advertising expenditures lead either to higher per capita consumption rates or increased levels of abuse. As the chart in the front of this room demonstrates, beer sales have been either level or declining since 1981, a period when inflation-adjusted advertising expenditures have grown significantly.

Estimates are that per capita alcohol consumption in 1984 was 2.65 gallons, which is the lowest figure since 1977. This downturn in per capita consumption represents the longest continuous period of decline since prohibition.

In the interest of time, I would conclude by noting that while we applaud the concern for alcohol abuse presumably demonstrated by most of the petition, it should be noted that the executive council of the 13.8 million member AFL-CIO passed a resolution opposing specious short-term solutions to alcohol abuse, including a broadcast advertising ban or counteradvertising.

In some Orwellian nightmare, the television set may well have taken control, but in America today, the family remains the most powerful determinant of drinking and other lifestyle practices.

Thank you, Mr. Chairman.

[Testimony resumes on p. 468.]

[The prepared statements of Mr. Shea and Mr. Lambright follow:]

Testimony
of
Donald B. Shea
President
United States' Brewers Association, Inc.

Good morning, Mr. Chairman and members of the Committee. Thank you for the opportunity to testify before you this morning.

My name is Donald B. Shea and I am President of the United States Brewers Association, Inc. (USBA). Founded in 1862, USBA is our nation's oldest trade association in continuous existence. Its membership is comprised of domestic brewers, beer importers and suppliers to the brewing industry.

The brewing industry shares the concern of this Committee and the entire nation about the misuse of alcohol beverages. We recognize our obligation to work with responsible organizations and individuals in the public and private sectors in seeking to alleviate the problems attendant to the excessive or inappropriate use of our products.

The brewing industry shares the belief that educational programs rather than punitive legislation or regulations provide the more appropriate method for society to minimize the incidence of alcoholism and other forms of alcohol abuse.

Industry programs in this area are premised upon the philosophy that the decision to drink or not to drink alcohol beverages is a personal one which should be based on accurate information. Second, it has been and remains our firm position that persons of legal age who decide to drink should do so in moderation and under appropriate circumstances.

The current controversy over the broadcast advertising of beer and wine has been dominated by emotion, conjecture and personal opinion. As a result, much of the discussion has centered more on the propriety of drinking than whether beer and wine commercials cause misuse of these products.

Throughout American history, ambivalence has existed over the use of alcohol beverages. Earlier in this century, this confusion resulted in National Prohibition. Today, the current high emotions surrounding this issue threaten to obscure the facts provided by the marketplace and empirical research. This evidence does not support further government regulation of alcohol beverage advertising.

Voluntary Advertising Guidelines

There are already a myriad of laws and regulations governing alcohol beverage advertising administered by state regulatory bodies, the Bureau of Alcohol, Tobacco and Firearms (BATF) and the Federal Trade Commission (FTC). In addition to this extensive governmental supervision, the brewing industry has developed two major self-regulatory devices. Since the 1940's, the brewing industry has had voluntary advertising guidelines which delineate the proper standards for beer advertisements. Further, there is a brewing industry Advertising Review Panel to evaluate advertising practices and assure the propriety of all beer advertisements.

These voluntary guidelines have been reviewed periodically and revised as necessary to reflect the changing nature of the brewing industry and the American society which it serves. Beginning in February 1984, the entire malt beverage industry engaged in another update of these guidelines. In addition, an industry-wide task force was established to reorganize the panel of experts to serve as the Advertising Review Panel.

To give you an example of this updated Code, the first of these twenty Brewing Industry Advertising Guidelines reads: "Beer advertisements should neither suggest nor encourage over-indulgence." To assure strict adherence to this standard, no depiction of on-camera drinking is permitted.

Other standards dissuade beer advertisers from portraying beer drinking before or during the performance of hazardous jobs or other activities requiring a high degree of alertness. One guideline specifically prohibits beer ads from condoning, either explicitly or implicitly, drunk driving.

Our voluntary code has long discouraged advertisements directed toward the young. For example, the Guidelines state explicitly: "Beer advertising should neither portray nor encourage drinking by individuals below the legal age of purchase;" and, "No beer advertisements should in any way suggest non-compliance with legal age of purchase limitations." A complete set of these Brewing Industry Advertising Guidelines is submitted as part of this testimony for inclusion into the record of this Hearing (Appendix A).

A second self-regulatory device, unique to the brewing industry, is the Advertising Review Panel, established in 1955. This independent group of experts from outside the brewing industry considers complaints from brewers and importers about any advertisement which could be considered to violate the industry's Advertising Guidelines. If the Panel determines that a complaint is justified, the brewer is notified with a request that the advertisement either be changed or withdrawn. Compliance is strictly voluntary in accordance with Federal anti-trust laws.

Within the next few weeks, a newly restructured Panel will be in place to monitor adherence to our recently revised Guidelines. This Panel will be comprised of people with experience in a wide variety of fields including: advertising, alcohol education, broadcasting, politics, public opinion, academia, business and communications.

Advertising Restrictions Unwarranted

Last month, the Federal Trade Commission denied a petition, filed in 1983 by the Center for Science in the Public Interest (CSPI) and several other advertising ban proponents, which called for further restrictions ranging from a complete elimination of all alcohol beverage ads to mandated counteradvertising. In conjunction with this ruling, the FTC released a comprehensive staff report which determined that "the literature regarding the quantitative effect of alcohol advertising on consumption and abuse found no reliable basis to conclude that alcohol advertising significantly affects consumption, let alone abuse." In coming to this conclusion, the FTC staff reviewed 66 references dealing with the effects of advertising.(1)

The majority of research on alcohol beverage advertising has been compiled since 1976 when the Senate Subcommittee on Alcoholism and Narcotics held extensive hearings on the impact of the media on alcoholism and other alcohol-related problems. Noting the paucity of scientific data on advertising's impact, the then Director of the National Institute on Alcohol Abuse and Alcoholism (NIAAA), Dr. Ernest P. Noble, urged the brewing industry to determine the impact of its advertising. Dr. Noble observed:

> I think that the (alcohol beverage) industry should make substantial commitments to research and to consumer education. The Federal Government has made a major commitment in this area in the form of the Institute which I represent. The beverage industry should make a similar commitment.(2)

Subsequently, the brewing industry became one of a variety of government and private entities supporting such scientific investigations.

One of the earliest of these studies was undertaken at Washington University in St. Louis, Missouri. The study, authored by Dr. David J. Pittman and Dr. M. Dow Lambert, was a survey of the research literature on advertising's impact. Their comprehensive investigation found no scientific evidence to indicate that alcohol beverage advertising had any significant impact on the rate of alcohol misuse or alcoholism. Further, Pittman and Lambert concluded that the effects of mass media influence on human behavior have been exaggerated. Dr. Pittman wrote:

> Because of its ubiquitous presence in American society there is a tendency to over-emphasize or exaggerate the impact of television viewing on behavior patterns from alcohol use to voting preference in elections. In this simplistic explanation of behavior the individual television viewer is conceived of as a robot who succumbs as a conditioned Pavlovian dog to the commands of television messages to purchase one product or another.(3)

Another Washington University researcher, Dr. Donald E. Strickland, who is testifying at this hearing, found in several 1982 investigations (partially funded by NIAAA and USBA) that only marginal changes in alcohol consumption could be associated with advertising. More importantly, Dr. Strickland observed that these "... meagre effects on consumption are simply not translated into effects on alcohol problems among youth."(4)

In 1984, Paul M. Kohn and Reginald G. Smart of Canada's Addiction Research Foundation published two studies examining the effects of beer advertising on young men. The second of these, published in the peer-reviewed Journal of Studies on Alcohol, specifically focused on the effects of beer advertising during sports programming on the consumption patterns of college-aged men. While watching a videotaped soccer game interspersed with beer commercials ranging in number from zero to nine, the 125 college students had immediate access to beer and soft drinks. Kohn and Smart found that the "... amount of advertising exposure had no significant effect on consumption"(5) and concluded that the findings "... do not support strong concern about the effects of televised beer advertising on a young, male population, even with ongoing, immediate access to beer."(6)

This year, the Traffic Injury Research Foundation of Canada (TIRF) released a report entitled Alcohol-Specific Controls: Implications for Road Safety, which examined the question of whether alcohol beverage advertising contributes to the problem of drinking and driving. The study came to the following conclusions:

1. There does not appear to be a relationship between per adult consumption of alcohol and the amount of money spent advertising it;
2. International comparisons fail to show any relationship between per capita consumption of alcohol and advertising policies (restrictive vs. liberal);
3. National comparisons (within Canada and within the U.S.) fail to show any relationship between per capita consumption and the amount or form of advertising that is permitted;
4. Results of studies in provinces where periodic bans on advertising have been introduced failed to show any effect on the consumption of alcohol;
5. There is no evidence of a relationship between advertising and the extent of drinking-driving or alcohol-related crashes.(7)

The TIRF study's examination of the international experience with ad bans is particularly notable. The authors compared per capita consumption from 1972 to 1981 in four countries with very restrictive advertising policies (Hungary, Denmark, Finland and Norway) to three countries with fairly liberal advertising policies (Netherlands, Australia, and Japan). The results showed little difference in consumption rates. Specifically, the study found that:

> ... two countries with reasonably high and similar per capita consumption one of which prohibits advertising (Hungary), the other permits it across all forms of media for all beverage types (Australia); two countries have moderate levels of consumption - one of these (Denmark) prohibits advertising, the other (Netherlands) permits it; three countries have low consumption rates - two of these (Finland and Norway) prohibit advertising, one (Japan) has no restrictions.(8)

A graph illustrating the above with the United States plotted in by USBA has been included in Appendix B.

Many proponents of further advertising restrictions, while ignoring the foregoing investigations, repeatedly cite a 1980 Michigan State University study by Dr. Charles Atkin and Dr. Martin Block to advance their claim of a causal connection between advertising and alcohol misuse. This particular study was analyzed in depth by the FTC staff during their examination of the CSPI petition. Their conclusion was:

> There are serious flaws in the Atkin and Block study that render it entirely inconclusive with respect to the effect of alcohol advertising on the overall demand for alcoholic beverages. Atkin and Block themselves note that theirs is an exploratory study that was not intended to be a rigorous test of any hypothesis.(9)

Available research uniformly demonstrates that parents and peers are the major influences in shaping drinking habits. In 1983, an extensive survey of the available research data by the bipartisan Congressional Office of Technology Assessment noted:

> The most reliable predictor of drinking among youths is the drinking behavior of their parents although peers have an important influence.(10)

Other influences on teenage drinking cited in this study included: residence in an urban area, divorced and separated parents, poor parent-child relationship and high socioeconomic status. It is of critical importance to note that in this exhaustive review of the available research, not even one mention was made of advertising as a factor in shaping drinking behaviors.

Consequently, prior to the consideration of restrictions on the advertising of legal products, it is critical to conduct a thorough review of the scientific evidence, which in this instance fails to show any causal connection between alcohol beverage advertising and alcohol abuse. We are certain that every reputable scientific organization shares the view that available empirical research should not be cavalierly ignored.

Counteradvertising is Unwarranted

In lieu of a total ban on the broadcast advertising of beer and wine, one proposal being offered calls for the Fairness Doctrine to be amended to apply its equal time provisions to alcohol beverage commercials. We believe this extension would be unwarranted because this proposal rests on the premise that all consumption of alcohol beverages is dangerous and/or unhealthy.

In the past, the Fairness Doctrine was applied to only one other product category, namely cigarettes. However, while cigarettes have been determined to be inherently dangerous, drinking beer, wine and liquor in moderation is not harmful and may in fact be beneficial. The latter difference was articulated by Dr. William Pollin, Director of the National Institute on Drug Abuse in an interview with The Washington Post on November 24, 1984:

> The key comparison we can make is that 90 percent of current drinkers in this country are quite comfortable and able to control their intake and thus are not in any sense addicted to alcohol .... The ratio is almost reversed in regard to cigarettes. All the surveys show that 60 percent to 90 percent of smokers would very much like to cut down or quit and are unable to do so.(11)

Further, there is a growing body of medical evidence which indicates that moderate drinkers may have reduced risk for the development of coronary heart disease, the leading cause of death in the United States, than either abstainers, ex-drinkers or heavy drinkers.

These findings were first documented in the early 1970's by Dr. Arthur Klatsky and his associates at Kaiser-Permanente Medical Center in California. Since that time, Dr. Klatsky has consistently found that those who drank moderately were 30 percent less likely to have a heart attack than those who did not consume alcohol beverages. This association was independent of age, sex, prior coronary disease, smoking, hypertension, obesity, ethnic origins, and psychological traits. Last month in a paper presented to the American College of Cardiology, Dr. Klatsky re-confirmed these findings based on an examination of the health records of 100,000 patients from 1978 to 1982.

Other researchers from many parts of the world, ranging from Hawaii to Yugoslavia, have found similar results. For example, after comparing heart disease mortality in 20 countries in 1972 with per capita alcohol consumption, LaPorte et al. found that "moderate alcohol consumption appears to be negatively related to rates of heart disease mortality." Further, an analysis of United States data for 1950 to 1975 found that as alcohol, particularly beer, consumption increased, mortality due to heart disease declined.

These findings were corroborated by the Honolulu heart study of 7,705 Japanese men in Hawaii. This study by Dr. Katsuhiko Yano and his associates found that those who drank two ounces of ethanol per day, particularly in the form of beer, were less likely to die from coronary disease than nondrinkers.

A complete listing of these studies is included.(12 - 23)

Application of the Fairness Doctrine

As the Committee is aware, the Fairness Doctrine has its ultimate roots in the First Amendment, and particularly in the obligations of the media to encourage broad public awareness of "the vital public issues of the day."(24) The chief purpose of the doctrine has been to ensure the wide public dissemination of information from "diverse and antagonistic sources"(25) regarding political issues and matters of public policy. Even within the area of political debate, however, the doctrine has always sought to balance two competing First Amendment considerations: the obligation placed upon broadcasters to disseminate fairly a wide range of ideas; and the right of broadcasters to select for themselves, without undue government interference, what they will broadcast.(26) In a real sense, the doctrine attempts to vindicate the First Amendment by eroding one part of the amendment's protection. Balance and compromise are inevitable, and the problems of compromise are intensified by the fact that broadcasting is an industry of "scarcity"(27) in which there are always more people who wish to broadcast than there are frequencies or time to give them.(28)

To prevent the doctrine from interfering too severely with the rights of broadcasters, several important restrictions have been imposed upon its scope. First, the doctrine is applicable only to "controversial issues of public importance." Matters that are either non-controversial or unimportant impose no obligation upon a broadcaster to present opposing views. Second, the broadcaster's obligation is to be balanced, but he is not compelled to present the views or message of any particular individual or group. So long as a reasonable balance is achieved, the broadcaster is free to exercise his First Amendment right to select his programming. Third, the doctrine has no application to advertisements for commercial products or services.(29) The one occasion on which the FCC extended the doctrine to such advertisements has since been repudiated by the Commission as "a serious departure from the doctrine's central purpose."(30) This position has generally been supported by the courts.(31)

We believe that the balance struck by the FCC in its 1974 Fairness Report remains correct, and that it would be wrong to extend the doctrine to the advertising of beer or any other commercial product. Any such extension would inevitably require responses to virtually all advertising. Every advertisement of every product emphasizes the product's advantages and positive qualities, while ignoring or minimizing its weaknesses. Every advertisement could therefore be argued to warrant some response. In addition, a long list of products might be said to justify responsive advertising because of asserted health, safety or environmental issues. Excessive consumption of soft drinks, coffee, tea, eggs, milk, red meat, sugar and numerous other foods is believed by some to create various health problems. The artificial sweeteners in diet soft drinks, for example, raise health issues that might be deemed to warrant responsive advertising. Similarly, automobiles are associated with highway deaths, gasoline with air pollution,(32) and aerosols with other environmental problems. Virtually all drug products have side effects or may be harmful if misused. As these and other products illustrate, every advertisement of every product can be deemed to raise issues regarding the product's efficacy, social utility or consequences of its use, all of which arguably could warrant responsive advertising. Even the alleged character of the advertiser, or its labor-management disputes, might be argued to require responsive advertising.(33)

The simple fact is that no line can fairly be drawn around any product or group of products, and any decision to open the advertising of one product to the Fairness Doctrine should open all advertising of all products to the doctrine. To do so would, however, swamp broadcasters in demands for responsive advertising, seriously eroding their First Amendment rights and cluttering the airways with messages the public neither needs nor wants. The public already has free access to very extensive information regarding advertised products, and there is no justification for imposing broad new requirements upon broadcasters that would not appreciably assist consumers in choosing the products they wish to consume.

Impact of Advertising on Consumption

A major assumption made by proponents of equal time provisions is that increases in per capita consumption equate with increases in alcohol misuse. This theory has not been borne out by experience in the United States.

The National Institute on Alcohol Abuse and Alcoholism (NIAAA) recently funded a series of studies in the State of Iowa by J.L. Fitzgerald and H.A. Mulford. Over an 18-year period between 1961 and 1979, Iowans increased their per capita alcohol consumption 81 percent, but there was "little or no change in the prevalence of problem drinking."(34) Problem drinking "remained stable whether measured by liver cirrhosis death rates or by several survey indicators."(35) The latter included: trouble due to drinking in five areas including family, police, finances, health or on-the-job performance; preoccupied drinking, which included morning drinking and black-outs; uncontrolled drinking; and problem drinking in the household.

The two researchers came to the conclusion that trying to predict problem drinking rates in a population based only on one factor such as total consumption "is not unlike forecasting a change in the weather based only on a shift in wind direction."(36)

The control of consumption theory was also given a 13-year trial in the United States beginning in 1920 when National Prohibition took effect. While failing to curtail alcohol abuse, the Prohibition experience created significant new problems, the legacy of which still negatively affects American society. The public lost respect for the law and governmental leaders. Organized crime became institutionalized in the United States as a result of the enormous untaxed profits resulting from bootlegged liquor.

Contrary to popular belief, the introduction of the electronic media has not resulted in this nation's highest level of alcohol beverage consumption. Historical records reveal that in 1830, long before the invention of radio and television, per capita alcohol consumption was seven gallons, nearly two and one-half times today's consumption level.(37), (38)

Moreover, beer sales have been either level or declining since 1981, a period when advertising expenditures have reached extremely high levels. A review of the tables and chart included as Appendix C reveals the trends in beer advertising expenditures in comparison with beer per capita consumption.

The chart demonstrates the lack of correlation between total brewing industry advertising expenditures and per capita consumption levels. Beer advertising significantly impacts upon individual brands and company sales, with only meager impact on the total market. Factors which do influence per capita consumption include disposable income, price, population size and mix, and related economic and sociological influences.

As the chart indicates, inflation-adjusted advertising expenditures actually declined in the early 1970's at a time when per capita consumption increased. Later in that decade and in the 1980's, there were dramatic increases in beer advertising while per capita consumption rose only moderately and then actually declined.

Advertising has enabled individual brewers to increase market share at the expense of competitors. A one percent change in market share has been estimated to be worth $380 million at retail, thereby explaining the necessity for substantial advertising expenditures in a stable market. Advertising enables brewers to expand into new territories and increases competition within the brewing industry.

An additional study relative to brewing industry advertising and malt beverage demand was recently prepared by R.S. Weinberg & Associates, a consulting firm in St. Louis.

The Weinberg report, which has already been forwarded to this Committee, makes four specific points:

1. Changes in the level of the consumers' demand for malt beverages through the entire post-World War II period can be statistically 'explained' in terms of population, age structure of the population, price and income and are indeed independent of changes in the level of industry advertising expenditures.

2. While the current levels of industry advertising expenditures may appear to be extremely high, when adjusted for inflation and the growth of the market itself, current levels of malt beverage advertising intensity are significantly less than their levels during the late 1950's and early 1960's.

3. A detailed analysis of measured media spending for specific malt beverage brands clearly indicates that the increase in industry advertising intensity during the 1974-1983 period reflects the introduction of new brands (i.e., the entire light beer product segment and important new entries in the imported malt beverage and super premium malt beverage product segments).

4. While malt beverage industry advertising has had little, if any, measurable effect on total malt beverage demand, advertising expenditures have been crucial in determining both the product segment structure and specific brand structure of malt beverage sales. That is, advertising expenditures determine the distribution of, but not the level of, malt beverage demand. Advertising expenditures are an instrument for altering the competitive balance within the brewing industry and have little, if any, effect on the actual level of industry sales.(39)

Advertising also assists in the introduction and public acceptance of new products such as lower calorie and reduced alcohol malt beverages. Brewers have been responsive to the increased health consciousness among the American public which has led to more moderate diets, more exercise and more responsible alcohol consumption. Without the freedom to advertise on the broadcast medium, the brewers' ability to respond to new public demands and needs would be severely limited.

One specific charge made by advertising opponents has been that broadcast advertising has increased illicit alcohol use by young people. However, the National Institute on Drug Abuse's annual surveys of 17,000 high school seniors, conducted by Dr. Lloyd Johnston of the University of Michigan, show a gradual decline in alcohol use among this age group since 1979.

Daily use of alcohol in 1984 by teenagers was down to approximately five percent from a high of seven percent in 1979. For the first time since the study began, binge drinking (defined as five or more drinks in a row within two weeks prior to the survey) declined, to 39 percent in 1984 from 41 percent in 1983. While drinking levels among young people continue to be reason for concern, teenagers have been reducing their consumption over the same period when advertising expenditures dramatically increased.(40)

Figures prepared by the NIAAA show that overall per capita alcohol consumption increased and then declined during the past years. Estimates for 1984 by USBA, using the same methodology as NIAAA, reveal per capita consumption to be 2.65 gallons, which is the lowest figure in seven years, or since 1977. More recent trends reveal that per capita consumption has declined by five percent since 1979, or from 2.78 gallons to 2.65. In fact, this downturn in per capita alcohol consumption represents the longest continuous period of decline since Prohibition.

U.S Apparent Consumption of Alcohol

(Gallons Per Year)

1973 - 1984

1973	2.62	1979	2.78
1974	2.67	1980	2.76
1975	2.70	1981	2.77
1976	2.69	1982	2.72
1977	2.65	1983	2.69
1978	2.71	1984	2.65 (est.)

SOURCES: 1970-1983, National Institute on Alcohol Abuse and Alcoholism; 1984, U.S. Brewers Association.

The ability to market products is an integral part of the American free enterprise system. Since Repeal, the brewing industry has made significant contributions to the United States economy. Currently, the brewing industry in the United States directly employs close to 42,000 people with a payroll of approximately $1.4 billion. Beer wholesalers employ an additional 85,000 with a payroll of $1.9 billion. Brewers pay $1.6 billion in Federal excise taxes on beer as well as an additional $1.2 billion in state excise taxes. Agricultural purchases amount to over $900 million a year and the industry's annual bill for packaging is over $4.5 billion.

The AFL-CIO recently recognized the importance of preserving the brewing industry's basic right to compete in the marketplace. The 13.8 million member labor organization's Executive Council passed a resolution earlier this year opposing "specious, short-term solutions" to problems such as alcohol abuse, including "proposals to abolish all radio-television advertising of alcoholic beverages and to require mandatory 'counter-advertising'."

Alcohol Awareness Programs of the Brewing Industry

Voluntary industry programs are in keeping with our belief that education provides the best method of reducing the rates of alcohol misuse. Every medium of communication is being used extensively to advance alcohol abuse prevention strategies and to recognize that misuse of alcohol is a "people" problem.

USBA launched in 1979 a nationwide alcohol awareness program entitled "Think Twice ... About Drinking." All materials in this program encourage those who elect to use our product to drink in moderation, under appropriate circumstances and in conformance with all legal requirements.

A combination of medical, psychological and sociocultural factors appear to play a role in alcohol misuse. We believe that alcohol problems and the incidence of alcoholism can best be reduced by prevention measures based on sound empirical research. The brewers have and will continue to support research through the Alcoholic Beverage Medical Research Foundation, established in October 1981, at The Johns Hopkins University. The brewers of the United States and Canada are the main contributors towards its support. Approximately one million dollars in grants are awarded each year to researchers throughout North America. The foundation has complete freedom to publish all research findings. Among the subjects being studied by foundation grantees are: the factors influencing the transition from moderate to excessive drinking; the effects of moderate drinking; and drunk driving.

Last year, the foundation sponsored the North American Conference on Alcohol and Highway Safety. The leading researchers in the field, members of grassroots groups such as Mothers Against Drunk Driving (MADD), Students Against Driving Drunk (SADD), and Remove Intoxicated Drivers (RID), government representatives and brewing industry personnel from four countries participated. The three-day meeting sought to look at all factors which contribute to the problems of drunk driving.

Part of any "solution" to the problem of alcoholism is adequate treatment programs. USBA has encouraged early intervention into alcohol problems through distribution of an employee assistance program (EAP) manual. Through EAP's, employers can motivate workers to seek help for their alcohol problems at an early stage. Targeting the workplace is one of the best vehicles for early intervention into alcoholism.

The best preventive measure against alcohol misuse is education, and several USBA educational programs focus on young people.

One of the main groups targeted by USBA's "Think Twice ... About Drinking" program has been college students. In 1979, we began publishing On-Campus Review, a periodical which contained a round-up of ideas for setting up college alcohol education programs. Our National On-Campus Alcohol Education Manual grew out of this journal and provides a cross-section of college programs so that college administrators and others can choose the elements that best suit their particular school's situation. A pamphlet called "Cheers" provides guidelines for the responsible operation of college pubs.

USBA also assists state law enforcement agencies in preventing sales to those below the legal age of purchase by educating retailers on the importance of checking for valid identification before serving individuals. The association has distributed thousands of retail posters, which remind underage people not to attempt to purchase beer illegally.

During the last two years, we have begun to support prevention programs aimed at high school students. Though the brewers do not condone drinking by this group, like the Federal government, we recognize that the statistics show that large numbers of young people do drink. Therefore, it has been our desire to make them aware of the dangers associated with illegal consumption.

The United States Brewers Association was the first corporate sponsor of Students Against Driving Drunk (SADD), a grassroots educational program for high school students. Last year, President Reagan specifically commended SADD for helping to create a "groundswell of awareness and action" which has helped educate the public about the dangers of drunk driving.

SADD is successful because two key factors, parents and peers, are targeted by the program. In addition to the 15-lesson curriculum on alcohol misuse, students are encouraged to participate in extracurricular activities designed to increase awareness throughout their communities on the dangers of drinking and driving. Finally, parents are involved through the SADD "Contract for Life," which provides a mechanism to open the lines of communication between parents and child on the subject of alcohol misuse.

USBA is currently distributing a public service announcement for SADD called "Make the Agreement," which has been endorsed by the U.S. Department of Transportation. It comes in both 30-second and 60-second versions.

Copies of the various USBA alcohol awareness materials have been made available to the members of this committee and to committee staff. Additional copies are available upon request.

In addition to the Association's own program, USBA is a member of the Licensed Beverage Information Council (LBIC), which is supported by the beer, wine and liquor industries at the producer, wholesaler and retailer levels. LBIC is far advanced in providing public information on key behavioral problems through programs such as the national "Friends Don't Let Friends Drive Drunk" campaign, undertaken in 1983 in cooperation with the Department of Transportation, and those for young mothers on problems such as the Fetal Alcohol Syndrome.

Individual brewers and beer wholesalers have been actively involved in promoting educational approaches for a number of years.

Anheuser-Busch Companies has developed a significant campaign called, "Know When to Say When." As part of this effort, Anheuser-Busch is airing ads featuring baseball star, Steve Garvey, who tells consumers that, "good friends and good sense make for a good time. So when it's party time, know when to say when ....".

The Buddy System is another Anheuser-Busch program for young adults of legal age, which discourages driving while intoxicated. Anheuser-Busch has also developed a designated driver program called, "I'm Driving." One person in a group of patrons elects not to drink and will be responsible for driving the others home. This person is entitled to free soft drinks throughout the evening.

Together with the Miller Brewing Company, Anheuser-Busch supports a server training program called T.I.P.S. (Training for Intervention Procedures by Servers of Alcohol).

Miller Brewing Company supports a wide range of programs in the alcohol field. The company was an early and major supporter of BACCHUS, a national campus program to prevent alcohol abuse among college students.

The company recently established the AIM (Alcohol Information From Miller) program. Miller distributors and employees have made presentations using AIM educational materials to adult and youth organizations throughout the country. Miller recently co-sponsored a designated driver public service announcement with the National Sheriffs' Association for showing on more than 300 television stations.

Adolph Coors Company has promoted nationwide distribution of "Alcohol, Drugs and You," an alcohol education curriculum designed by the Center for Applied Prevention Research, as well as a Student Leadership Training Program created by the Center for Educational Development. A Wellness-oriented pilot program was developed for the Colorado School of Mines, with the help of a grant from Coors. Student services were expanded to help young people cope with the pressures associated with the academic environment. Coors has also encouraged the implementation of Wellness programs to prevent problems from developing by teaching employees how to manage stress better and adopt life styles which promote good health practices.

The Stroh Brewery Company is a sponsor of the new national Techniques of Alcohol Management (TAM) teaching program, which is educating retail servers of alcohol on the best, state-of-the-art techniques to curb abusive drinking and drunk driving. In addition, Stroh actively supports the BABES (Beginning Alcohol and Addictions Basic Education Studies) program for elementary school-aged children. Founded in 1979 by Lottie Jones, Executive Director of National Council on Alcoholism (NCA)/NARCO Greater Detroit Area and BABES program coordinator Maxine Willis, BABES uses puppets and an appealing storyline to give information on self-image, feelings, coping skills, alcohol and drugs. Stroh encourages their wholesalers to support similar programs on the local level.

Through its Young Adult Alcohol Awareness program, the G. Heileman Brewing Company has adopted guidelines for its marketing to college campuses, similar to those of other brewers, which insure that the rights of non-drinkers will be respected and that they will in no way be encouraged to consume alcohol beverages. The company refuses to sponsor competitive beer drinking contests, nor will its promotions imply that social acceptability is based on alcohol consumption by young adults and, to that end, Heileman promotions never offer free samples.

In addition to these brewer programs, the nation's beer wholesalers are actively involved in local community prevention efforts. For example, the National Beer Wholesalers' Association (NBWA) has developed and is distributing a comprehensive 2nd grade through 12th grade educational curriculum called "Preventing Alcohol Abuse (PAA)." With the assistance of beer wholesalers across the country, NBWA aims to place the PAA curriculum in every elementary, junior high and senior high school in the country. "Preventing Alcohol Abuse" presents students with a factual, non-judgmental approach to alcohol use and abuse that will enable them to make responsible decisions about drinking or not drinking.

The programs which I have just outlined are a positive response towards preventing problems relating to the overconsumption of alcohol. Effective educational programs in the schools, adequate alcoholism treatment, continuing research and employee assistance programs in the workplace can only be widely implemented if all elements of society, including the alcohol beverage industry, work together to combat alcohol abuse.

Further restrictions on the brewers' Constitutional right to advertise a legal product would only unfairly stigmatize all consumption of malt beverages without reducing misuse. In some Orwellian nightmare, the television set may have taken control but, in America today, the family remains the most powerful determinant of drinking practices. Such basic values as individual responsibility and accountability cannot be instilled by government fiat.

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APPENDIX A

BREWING INDUSTRY ADVERTISING GUIDELINES

DECEMBER 1984

INTRODUCTION

These Brewing Industry Advertising Guidelines have been developed as a service to those responsible for the advertising of beer. They are intended to provide guidance which will assist brewers in maintaining the highest ethical standards in their advertising. The brewing industry first developed voluntary Guidelines on advertising in the 1940s. Over the years, the industry has periodically revised and updated these Guidelines.

BASIC GUIDELINES FOR BEER ADVERTISING

Beer is a refreshing, wholesome beverage meant to be consumed in moderation. Its origins are ancient, and it has held a respected position in nearly every culture and society since the dawn of recorded history. Advertising is a legitimate effort by brewers to make consumers aware of the particular types, brands and prices of malt beverages that are available.

Three basic principles which have long been reflected in the policies of the brewing industry continue to underlie these Guidelines. First, beer advertising should not suggest directly or indirectly that any of the laws applicable to the sale and consumption of beer should not be scrupulously complied with. Second, brewers should adhere to standards of candor and good taste applicable to all commercial advertising. Third, brewers are responsible corporate citizens, sensitive to the problems of the society in which they exist, and their advertising should reflect that fact.

These Guidelines consist of more specific provisions describing the advertising policies of the brewing industry.

1. **Beer advertisements should neither suggest nor encourage overindulgence.**

Because beer is a beverage of moderation, advertising should not portray or suggest its abuse, even in a comical vein.

2. **Beer advertising should neither portray nor encourage drinking by individuals below the legal age of purchase.**

3. **No beer advertisements should in any way suggest noncompliance with legal age of purchase limitations.**

4. **No beer advertisements should encourage or condone drunk driving.**

5. **Advertisements should not include scenes of inebriation, revelry, comical drunks, or any other depiction of beer drinkers who have in any way lost control of themselves.**

Beer advertisements should never directly or indirectly suggest misuse or abuse of the product.

6. **Beer advertisements should make no scientifically unsubstantiated health claims.**

If there exists significant controversy in the medical or scientific community regarding the accuracy of a claim, the making of that claim without simultaneously revealing the existence of the controversy should be avoided.

7. **Beer advertisements should not associate or portray beer drinking before or during activities in situations which require a high degree of alertness.**

Beer is for relaxation and is not compatible with driving or performing hazardous jobs.

8. **Advertising should neither state nor carry any implication of alcohol strength.**

Advertisements should not refer to the "strength" of a beer or boast subtly of "kick," or otherwise promote its relative alcohol content. Nor should advertisements include other subtle references to alcohol, such as puns on words like "spirit" or "proof," or any overt or implicit association with distilled spirits. Any claim of alcohol content permitted by applicable law or regulation shall be deemed to be in compliance with this Guideline.

9. **Beer advertising should not portray sexual passion, promiscuity, or any other amorous activity as a consequence of drinking beer.**

Beer is not related to sexual stimulation, and should not be portrayed in any fashion implying or suggesting that it is.

10. **Advertisements should not contain suggestive double entendres or any other material that might be considered lewd or obscene.**

11. Advertisements should not associate beer with crime, criminals, or any illegal activity.

Advertisements should not associate beer with any illegal activity or disreputable circumstances. Men and women portrayed in beer advertisements should be law abiding and mannerly.

12. Taverns or other places portrayed in beer advertisements should always be depicted as well-kept and respectable gathering places.

13. Religion and religious themes should never be employed in the advertising of beer.

14. Advertisers of malt beverages should not improperly disparage competing beers. Comparisons in advertising should be objective, truthful, and significant.

Advertising should address the merits of the products being offered. It should not characterize competing products falsely or inaccurately or in a misleading fashion. Comparisons in advertising should be objective and truthful. Consistent with Federal regulatory policies, comparisons must be adequately substantiated. Moreover, such advertising should provide useful and significant information to the consumer.

15. Advertising should never suggest that competing beers contain objectionable additives or ingredients.

These include representations or implications that other beers contain "synthetic additives" or other "artificial ingredients." Because these words often have pejorative meanings, their use is inappropriate. No beer may contain ingredients not permitted or approved by the Food and Drug Administration and authorized by the Bureau of Alcohol, Tobacco, and Firearms.

16. Beer advertisements should not make exaggerated product representations.

Beer advertisements should restrict themselves to an honest and accurate statement of facts. This is desirable in all advertising. Unfulfilled and false claims about a product do not benefit consumers.

17. Advertising should not use scientific or pseudo-scientific terms to convey the impression that a beer has special or unique qualities if in fact it does not.

18. No beer advertisements in college, campus, or other media should portray beer drinking as being important to education, nor should beer advertising directly or indirectly degrade study.

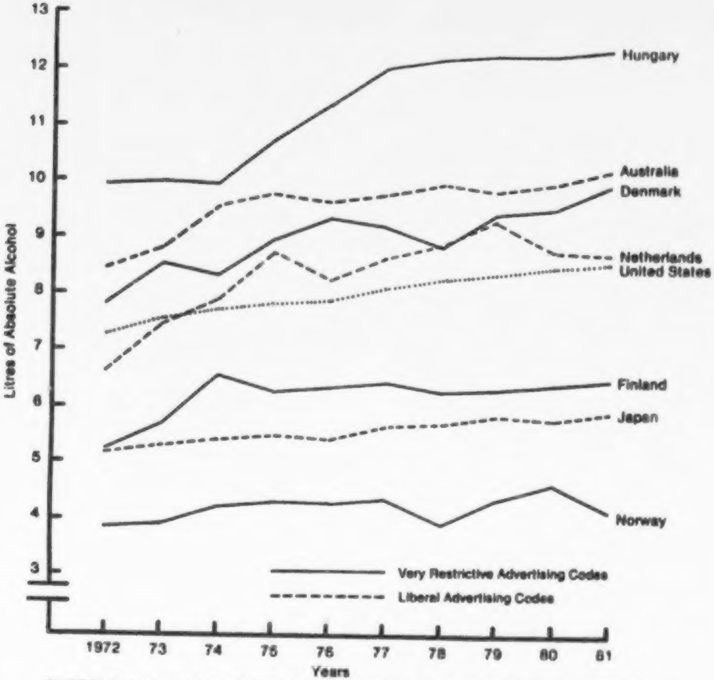
19. Beer advertising on television should make no representation of on-camera drinking, including sound effects of drinking.

20. Beer advertising should never show littering.

For further information or additional
copies of this booklet, write to:
United States Brewers Association, Inc.
1750 K Street, N. W.
Washington, D. C. 20006

TRAFFIC INJURY RESEARCH FOUNDATION STUDY GRAPH

Per Capita Consumption of Alcohol, Various Countries, 1972—1981



SOURCES: Alcohol-Specific Controls: Implications for Road Safety, Traffic Injury Research Foundation of Canada, 1985
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APPENDIX C

TABLE I

TOTAL BEER SALES AND PER CAPITA CONSUMPTION IN THE UNITED STATES

	Sales (barrels of 31 gallons)	Gallons Per Capita (21 Years & Over)
1970	122,750,000	31.01
71	128,317,000	31.73
72	132,739,000	32.10
73	139,600,000	33.13
74	146,850,000	34.20
75	150,323,000	34.33
76	152,773,000	34.19
77	159,460,000	34.98
78	166,167,000	35.69
79	172,559,000	36.29
1980	177,935,000	36.85
81	181,917,000	36.76
82	182,330,000	36.15
83	183,809,000	35.83
84	182,766,000	35.11

Source: U.S. Treasury Department and U.S. Department of Commerce.

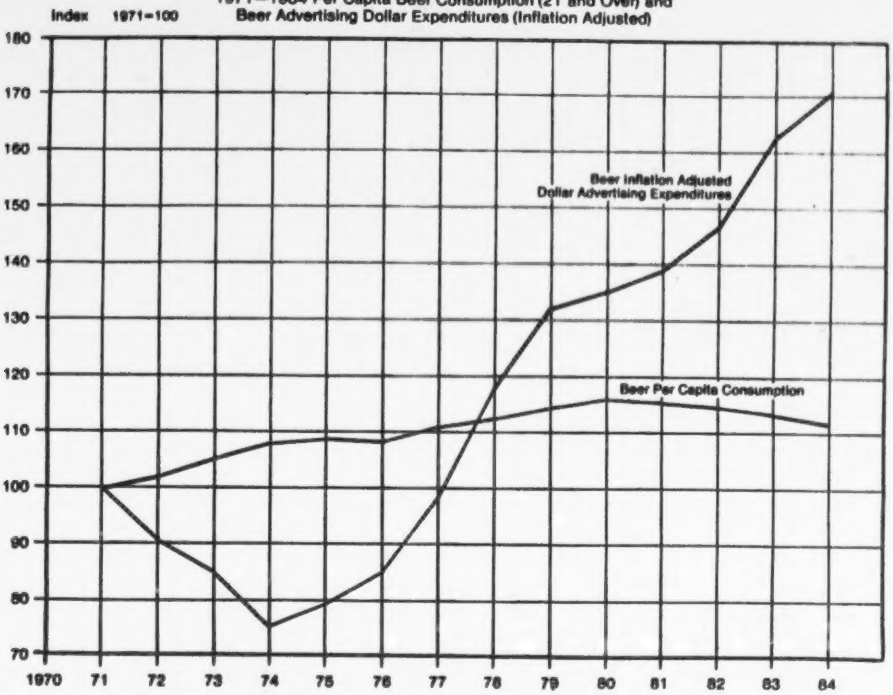
Table II

1970-1984 BREWER CONSTANT DOLLAR ADVERTISING EXPENDITURES
(1970 DOLLARS, THOUSANDS OF DOLLARS)

1970	130,316.2
71	135,185.8
72	122,613.1
73	114,234.9
74	101,585.8
75	107,704.4
76	114,079.3
77	132,263.1
78	159,180.0
79	178,728.6
1980	181,668.6
81	188,737.3
82	196,687.7
83	220,744.0
84 (estimate)	229,900.0

Source: 1970-1983, Leading National Advertisers and Broadcast Advertisers Reports, Radio Expenditure Reports, and R. S. Weinberg & Associates, Advertising Cost Index. 1984, United States Brewers Association estimate.

1971—1984 Per Capita Beer Consumption (21 and Over) and Beer Advertising Dollar Expenditures (Inflation Adjusted)



SOURCE: Beer Sales and Population, 1971—1983: U.S. Treasury Department & U.S. Department of Commerce; 1984: U.S. Brewers Association estimates; Beer Inflation Adjusted Advertising Expenditures 1971—1983: Leading National Advertisers and Broadcast Advertisers Reports, Radio Expenditure Reports and R. S. Weinberg & Associates, Advertising Cost Index; 1984: U. S. Brewers Association estimates.

TESTIMONY SUBMITTED BY
STEPHEN K. LAMBRIGHT
VICE PRESIDENT AND GROUP EXECUTIVE
ANHEUSER-BUSCH COMPANIES, INC.
TO THE U. S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON TELECOMMUNICATIONS,
CONSUMER PROTECTION AND FINANCE
MAY 21, 1985

Prior to the May 21, 1985 hearing date, a book entitled "Anheuser-Busch Programs to Promote Responsible Drinking," and a videotape of the two Anheuser-Busch moderation ads were submitted for the record and are incorporated by reference herein. I respectfully submit, for the record, the following written testimony which sets out the position of Anheuser-Busch Companies in greater detail.

OVERVIEW

Our statement addresses the following questions which were raised in the letter of invitation to testify:

QUESTION 1: Is there a causal connection between broadcast advertising for beer and wine and consumption, and abuse (including underage consumption and abuse)?

RESPONSE: No. Numerous scientific studies have failed to detect any evidence of a causal connection between advertising and abuse.

QUESTION 2: Should such advertising be banned or additionally restricted by legislation or regulation?

RESPONSE: No. Such government intervention would not only raise serious Constitutional questions but, if imposed, would do nothing to reduce the problem of alcohol abuse.

QUESTION 3: Under the Fairness Doctrine, should counter-advertisements be required for beer and wine product advertising?

RESPONSE: No. The Federal Communications Commission and the courts have ruled since the mid-1970s that the Fairness Doctrine should not extend to product advertising. The reasoning behind such interpretation is as sound today as it has been for the past ten years.

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QUESTION 4: Are the efforts of the beer and wine industries and the broadcast industry adequate in addressing the problem of abuse?

RESPONSE: Yes. These efforts are not only adequate by any reasonable definition of the term, but effective . . . producing positive results.

Anheuser-Busch agrees that alcohol abuse is a significant problem, and we share the public's deep concern over this issue. But history and scientific research have demonstrated that beer and wine advertising in no way contributes to alcohol abuse or implies that such abuse is in any way acceptable.

Attempts to redefine the existing and widely-accepted interpretation of the Fairness Doctrine so that it applies to product advertising, or to enact legislation creating some other type of "counter-advertising" requirement, raise serious First Amendment questions. What kinds of messages will government allow consumers to see and hear . . . and which messages will consumers be force fed?

Such a heavy-handed approach will provide no benefit. While it will not reduce alcohol abuse, it will exact a substantial cost from the affected industries, from consumers, and from society in general.

We do not question the sincerity of many who criticize our industry on this issue. We strongly disagree, however, with their interpretation of the available scientific evidence, with their disregard of the Constitutional safeguards accorded commercial speech, and with their assessment of the practical viability of the solution they have proposed.

THE EFFECTS OF ADVERTISING

Introduction

A major contention of those who would impose a Fairness Doctrine burden on beer and wine advertising is that such commercial messages contribute to alcohol abuse. In fact, despite literally scores of studies throughout the world, no connection between advertising and abuse has ever been established.

Earlier this year, the Federal Trade Commission (FTC) completely dismissed allegations that beer and wine advertising contribute to abuse. Following a comprehensive review of the available literature in response to a petition seeking to ban such ads, or to establish a counter-advertising requirement, the FTC staff found that:

> ". . . no theoretical argument or empirical evidence suggests that alcohol advertising has a significant effect on abuse. Alcohol abuse is a complex public health problem. There seems no reason to assume that advertisements for alcoholic beverages induce significant numbers of people to become alcoholics or to violate the laws against drinking and driving." (FTC Staff Report, 1985).

The primary effect of beer and wine advertising is to help existing consumers choose among competing brands, rather than to recruit new consumers. For example, an econometric study by Duffy (1981) on the influence of prices, income and advertising on the demand for alcoholic beverages that appeared in the *British Journal of Alcohol and Alcoholism* concluded:

> "We suspect that the main effect of drink advertising is to maintain or, if possible, increase a brand's market share. Most of the advertising messages tend to 'cancel out' each other in the competitive struggle between firms, so that there occurs only a small extension (if any) of total demand for the product."

In a 1984 study, the prestigious Traffic Injury Research Foundation of Canada similarly concluded that "Advertising may have been used as a tool to retain or strengthen market share -- even so, consumption did not increase in the face of this very pervasive and intense advertising."

In fact, no scientific studies indicate that advertising is a primary determinant of overall consumption. And even those studies which find a statistical relationship concede that it is, at most, a very limited and minor factor.

While advertising may have some marginal effect on consumption, this effect is minuscule in comparison to such basic factors as demographics, economics and social norms.

Does Advertising Cause Abuse?

Even if advertising were shown to prompt a small increase in overall consumption, there is no proof that such growth would lead to increased abuse.

Mulford and Fitzgerald (1983, 1984) studied the results of increased alcohol consumption in Iowa between 1961 and 1979. Their research, reported in the *Journal of Studies of Alcohol*, found that while per capita consumption increased by 81% during the period, problem drinking -- as measured by several indicators -- remained unchanged.

The researchers found that:

> "The nature and magnitude of the alcohol problem is influenced by too many forces interacting in too complex a manner to be understood or solved by merely identifying and correcting a biological abnormality *or by formal efforts to control the total volume of alcohol consumed by the population.*" (emphasis added).

Even the Center for Science in the Public Interest (CSPI) -- one of the most vocal critics of beer and wine advertising -- conceded in its petition to the Federal Trade Commission that "the available literature does not demonstrate a causal connection between advertising and harm."

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And yet, if the effects of beer and wine advertising are so substantial that a Fairness Doctrine remedy is justified, it should be easy to show a causal connection between advertising and abuse. The experience of the scientific community, however, runs in exactly the opposite direction.

Real world experience also fails to support the notion that advertising causes abuse. Certainly, if advertising were a primary contributor to abuse, then its total elimination should result in less abuse. Yet bans on advertising have been imposed in a variety of nations and across a wide spectrum of cultural settings and political systems . . . with uniformly disappointing results.

In a comprehensive review of the effects of advertising regulation on consumption rates, the Traffic Injury Research Foundation of Canada (1984) closely examined data from eight countries. The Foundation report concluded:

> "Thus, the results show two countries with reasonably high and similar per capita consumption, one of which prohibits advertising (Hungary), the other permits it across all forms of media for all beverage types (Australia); two countries have moderate levels of consumption -- one of these (Denmark) prohibits advertising, the other (Netherlands) permits it; three countries have low consumption rates -- two of these (Finland and Norway) prohibit advertising, one (Japan) has no restrictions.
>
> "*If advertising has effects on consumption, it is not evident in these data.*" (emphasis added).

Focusing on North America, the government of British Columbia banned advertising of alcoholic beverages for a 14-month period during 1971-72. A review of consumption trends during that period ". . . lent little support for the view that the B.C. advertising ban reduced alcohol consumption" (Smart and Cutler, 1976).

Similarly, looking at the beer advertising ban in the Canadian province of Manitoba during the middle 1970s, another study (Ogborne and Smart, 1980) concluded: "There is little evidence that per capita beer consumption has changed in any way since beer advertising ceased to feature in the Manitoba media."

In addition to examining the Canadian advertising bans, Ogborne and Smart also looked at states in this country which had enacted regulations to restrict newspaper and magazine advertising. They concluded that "such restrictions should be given a low priority among the possible solutions to problems of restraining per capita alcohol consumption."

Does Advertising Contribute to Underage Drinking?

In the absence of persuasive evidence that advertising contributes directly to abuse among the general population, some critics contend that such commercial messages exert undue influence on underage persons -- increasing abuse among a uniquely vulnerable group. Once again, however, this charge fails to meet the test of scientific scrutiny.

In a study of 1,187 teenagers, Strickland (1982) found that there was "virtually no effect of exposure to televised alcohol beverage advertising on the level of consumption among teenagers in the overall sample."

More recently, a study conducted by Kohn and Smart (1984) at the Addiction Research Foundation in Toronto, Canada, exposed 125 male college students to beer advertisements in a variety of controlled situations. The researchers attack the notion that advertising has a unique effect on young people.

> "Our studies have both policy and methodological implications. First, *they do not support strong concern about the effects of televised beer advertising on a young male population, even with ongoing immediate access to beer.* Although moderate advertising exposure did increase consumption, the effect was brief and evanescent . . ." (emphasis added).

The major academic studies linking advertising with underage drinking cited by industry critics were conducted by Atkin and Block (1981) at Michigan State University. However, the researchers themselves have been careful to warn that their findings are "suggestive and tentative rather than definitive."

The FTC staff assessed the work of Atkin and Block as follows:

> "The Atkin and Block study is, by its own admission, an exploratory study that was not meant to be a rigorous test of any hypothesis. Because of the nature of the study, the sampling technique, the ways in which the measure of exposure to advertising and alcohol consumption were constructed, and the statistical analysis employed, *it is impossible to make any meaningful statements about the effect of alcohol advertising on alcohol consumption based on Atkin and Block's results.*" (emphasis added). (FTC Staff Report, 1985).

Furthermore, given the sophistication of children regarding advertising, charges of "enticement" by beer commercials carry little weight. A number of studies give evidence of early and appropriate learning with respect to discounting advertising. Indeed, the ability to recognize persuasive intent in advertising has been shown to be universally operative by the fifth grade . . . an age well before children begin experimentation with alcohol or begin to drive (Robertson and Rossiter, 1974).

In this regard, it is worth quoting at some length from a World Health Organization paper by Marcus Grant, senior scientist, Division of Mental Health (1984):

> ". . . North American studies suggest that advertising is unlikely to recruit drinkers directly from those young people who are non-drinkers. It is more likely to influence particular styles and patterns of drinking, for those young people who already drink. One recent study from the United States showed that young people who were the heaviest drinkers, had also been exposed to most television drinks advertisements, and vice versa for the lightest drinkers. However, the amount of advertising influence was shown to be small, and much less than the influence which friends had on drinking. *This suggests that changes in advertising alone, would have very little direct impact on young people's drinking.*

> "In the same study, there was also an interesting relation between advertising exposure and those who were problem drinkers: they were found to have been exposed to less advertising than moderate drinkers. *This implied that advertisements might actually inhibit alcohol misuse, by reinforcing and encouraging norms of moderate, social drinking.*" (emphasis added).

It should be noted that statistics compiled by the University of Michigan in its annual poll of high school seniors show consumption rates for beer, wine and spirits to have remained remarkably stable since 1975 -- despite large increases in beer and wine advertising. And those changes revealed through the poll are, in fact, toward less drinking by underage persons (Monitoring the Future Surveys, 1984).

Certainly, much work remains in discouraging underage drinking. But there is no indication that beer and wine advertising are causes of this problem.

Conclusion

While all agree that alcohol abuse is a serious problem, there is no scientific indication of a causal connection between advertising and abuse. Therefore, government manipulation of beer and wine advertising offers little hope of providing a meaningful solution to abuse.

THE FAIRNESS DOCTRINE AND PRODUCT ADVERTISING

Introduction

Under current interpretations, the Fairness Doctrine clearly does not apply to product advertising.

More than ten years ago the Federal Communications Commission (FCC) determined that the Fairness Doctrine should not be applied to broadcast advertisements for commercial products or services. In its 1974 *Fairness Report*, which resulted from a comprehensive, three-year study of the policies underlying the Fairness Doctrine and their proper implementation, the FCC determined that because advertisements for commercial products or services "make no meaningful contribution to informing the public on any side of any issue," they should not be subject to Fairness Doctrine implications.

This position has been sustained in the courts. See *National Committee for Broadcasting v. FCC, 567 F.2d 1095 (D.C. Cir. 1977), cert. denied, 436 U.S. 927 (1978).*

Since the *Fairness Report* was issued, the FCC has steadfastly adhered to its position that the Fairness Doctrine does not apply to commercial advertisements. Although the FCC's determination does not preclude Congressional review, the decision of the agency charged by Congress with regulating broadcasting in the public interest should be given considerable weight.

What Limits Could be Established Under a Broader Interpretation of the Fairness Doctrine?

There are sound reasons for the FCC's approach. If Congress were to apply the Fairness Doctrine to advertisements for commercial products or services, then the FCC, licensees and advertisers would be forced to grapple with intractable problems inherent to the application of that doctrine.

Almost every ad would be viewed as controversial by some members of society:

- Highway safety advocates could view as controversial a commercial highlighting the qualities of high performance automobiles.
- Certain groups could view as controversial advertisements for birth control products.
- Some religious groups who object to the use of medicine could find controversy in commercials for over-the-counter drugs.
- Some groups could find controversial content in advertisements for almost any food product. In fact, the Center for Science in the Public Interest has attacked ads for food products which contain sugar, salt, caffeine, artificial sweeteners and processed flour. If the Fairness Doctrine is extended to product advertisements, there can be little doubt that CSPI and similar groups will be back to demand counter-ads for these products . . . and many more.

Where, how and by whom would the line be drawn in applying the Fairness Doctrine to product advertisements? An entirely new bureaucracy would be required . . . one charged with the Constitutionally sensitive task of policing the marketplace of ideas by regulating the flow of information to American consumers.

Would every commercial be subject to a "fairness review" before, or after, it is broadcast? What criteria would licensees or the FCC use to decide which ads or products are "controversial" enough to require rejoinder . . . and who should provide that rejoinder? How should the broadcast licensee's other news and public affairs programming that might touch on the product-commercial issue be counted?

As Dean Burch, former chairman of the FCC, has stated regarding the difficulty of achieving a proper balance:

> "(t)he road here could lead to a series of decisions with enough variables and shadings to rival a medieval religious tract." *National Broadcasting Company (Wilderness Society -- Esso). 31 FCC 2nd (Concurring statement. Chairman Burch).*

Unfavorable Consequences

The current interpretation of the Fairness Doctrine, which does not apply its obligations to commercial advertisements for products or services, has evolved for a variety of legitimate reasons.

But perhaps more important than any of the reasons discussed so far is the potential "chilling effect" such an approach could have on the free marketplace of ideas. Commercial speech provides the economic underpinnings for pure speech on radio and television . . . the primary mass communication media in this country.

Extension of the Fairness Doctrine to product advertising would likely drive a significant amount of advertising revenue away from the broadcast media. It is doubtful that many businesses would continue their broadcast advertising if the stations were obligated to seek out "counter-advertisers" who wish to attack the advertiser's product on ideological grounds.

This would have a devastating impact on free speech in this country. Without the diverse and substantial community of broadcast advertisers that currently exists, alternate sources of income would have to be sought out by broadcast licensees. This could result in a shift toward government funding, with all its attendant First Amendment concerns, or toward an increased reliance on those few advertisers who are able to escape Fairness Doctrine liability. Our society's ability to address controversial issues through the electronic media would be substantially impaired -- a result that runs directly counter to the Fairness Doctrine's intent.

The Fairness Doctrine and Advertising for Beer and Wine

The same reasons for not applying the Fairness Doctrine to *any* product advertisement in general are also true for beer and wine advertising in particular.

Beer and wine advertisements are not a special case. Unlike cigarettes, beer and wine are not intrinsically dangerous for the consumer. Thus, they should be treated no differently from other consumer goods which add to the quality of life when used appropriately.

As the FTC found in its recent response to the petition to ban beer and wine ads or to require counter-advertising:

> "In the context of alcoholic beverage advertising, these principles will not support a finding of substantial injury solely in the promotion of this lawfully marketed product. To hold otherwise would permit the Commission to substitute its own tastes for that of the marketplace. Thus, a finding that the challenged practices are unfair would require evidence that the practices are likely to lead to abuse. It is abuse, not consumption per se, that leads to unavoidable consumer injury."

In fact, substantial scientific evidence exists which shows that moderate drinkers derive health benefits from alcohol consumption. For example, Dr. Thomas B. Turner (1981), in a review of the literature on the health effects of moderate alcohol use, reported:

> "A number of well designed and executed case-control studies indicate that the risk of coronary heart disease, especially myocardial infarction, is lower in persons who use alcohol moderately than in abstainers."

Additionally, a 10 year study by the Kaiser-Permanente Health Plan in California (Klatsky, 1981) found that the 10 year death rate for moderate drinkers (1 or 2 drinks daily) was lower than that for either abstainers or heavy drinkers.

It is also worth noting, in the context of a discussion about requiring counter-advertising to warn people of the dangers of alcohol, that under current Bureau of Alcohol, Tobacco and Firearms (BATF) regulations, brewers and vintners are prohibited from mentioning the above -- or any other -- positive health effects of moderate drinking in their advertising.

Although the broadcasters are better able to assess the impact of the proposed interpretation of the Fairness Doctrine on their own industry, we have no indication that another advertiser is "waiting in the wings" to replace the revenue represented by the brewing industry. Our critics would like to have it both ways -- arguing that our industry's advertising expenditures represent an immense sum . . . but one that would not be missed by broadcasters. Obviously, this is not the case.

COMMERCIAL SPEECH AND THE FIRST AMENDMENT

Although the Subcommittee's inquiry is on the Fairness Doctrine, per se, the issue of government-mandated counter-advertising also must be evaluated from a broader Constitutional perspective.

Since the middle of the last decade, "commercial speech" such as beer advertising has been afforded protection under the First Amendment to the U.S. Constitution. The Supreme Court has repeatedly ruled that it is unconstitutional to restrict commercial speech unless a substantial governmental issue is directly advanced thereby, and the restriction is no more extensive than necessary to serve that interest. See, e.g., *Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980).* It is the government that bears the burden of demonstrating that advertising restrictions comply with these requirements.

It is highly unlikely that legislative restrictions on beer and wine advertising would pass Constitutional muster. While the federal government has a considerable interest in reducing alcohol abuse, restrictions on beer and wine advertising would not advance this interest.

Additionally, the Supreme Court has stated that the link between an advertising restriction and a substantial government interest must be more than "tenuous" and that "conditional and remote eventualities" simply cannot justify restrictions on promotional advertising. *Id.* at 560. There must be an "immediate connection" between the advertising and the undesirable outcome that the advertising restriction is intended to address. *Id.*

Any restriction on beer and wine advertising . . . be it an outright ban, or the imposition of a counter-advertising obligation . . . would in all probability fail to meet this requirement because there is no demonstrated link between such advertising and alcohol abuse -- and there is significant scientific evidence that such a link simply does not exist.

Indeed, the FTC found after considerable study that there is "no reliable basis on which to conclude that alcohol advertising significantly affects alcohol abuse." In the absence of such evidence, the Commission said,

> "(t)here is no basis for concluding that rules banning or otherwise limiting alcohol advertising would offer significant protection to the public." (Letter from the Secretary, FTC, to the Center for Science in the Public Interest, April 5, 1985.)

Given the Commission's recent findings, and the substantial body of evidence on which they are based, government intervention in this area lacks any meaningful justification. Such intrusion on basic First Amendment values must be vigorously opposed.

The Seiberling Bill

The bill recently introduced by Representative John F. Seiberling provides more than ample illustration of the "chilling effect" that will result from attempts to mandate counter-advertising for beer and wine commercials.

An impartial reading of this bill makes it clear that no industry would advertise its products under the provisions it would force on brewers and vintners.

- The Seiberling bill requires that one counter-advertisement be run . . . of equal length and to an equivalent audience . . . for each product advertisement that is aired. Thus, the advertisers' costs at least double.
- Every message encouraging consumers to choose a particular brand of product must be "balanced" by messages that say "using this product, regardless of the brand, can be dangerous." Thus, the value of the product commercial is greatly reduced, and perhaps even eliminated.
- Finally, since the counter-ads mandated by the bill grossly overstate the incidence of abuse in our society, the advertiser is actually paying to stigmatize his own product. Thus, the net result of any product advertising will be to undermine sales.

Clearly, if such a bill were enacted, there is little doubt that all beer and wine advertising would disappear from the airwaves. However, the problems with mandated counter-ads in general -- and the Seiberling bill in particular -- go well beyond the impact on brewers and vintners.

- Thanks largely to the voluntary actions of broadcasters, brewers, vintners, the news media and concerned citizens groups, a sense of personal responsibility is being reinforced among the vast majority of our customers. In fact, the public today is better equipped to assess the potential dangers of irresponsible drinking than at any time in the past. Government intervention through mandatory counter-advertising would seriously weaken or eliminate many of these voluntary efforts.

- Counter-advertising simply will not have an effect on chronic abuse. Chronic abuse is not created by advertising . . . and it cannot be cured by counter-advertising. In fact, to cite chronic abuse as a rationale for this form of social engineering is a cruel hoax.

- And perhaps most importantly, the imposition of mandatory counter-ads seriously erodes not only the First Amendment rights of advertisers to honestly promote lawful products, but also the right of consumers to receive commercial information free of government control.

Mandatory counter-advertising, in short, is unnecessary, ineffective, inequitable and Constitutionally suspect.

VOLUNTARY EFFORTS BY THE PRIVATE SECTOR

The final question raised by the Subcommittee is whether voluntary programs undertaken by brewers, vintners, distillers and broadcasters are "adequate" to deal with the problem of alcohol abuse. While any determination of adequacy must to some extent be left to the predisposition of individual observers, the following points should be made:

- If "adequate" is defined as the total elimination of alcohol abuse, no effort -- public or private -- will ever meet that standard. Our nation's experience during Prohibition amply illustrates that fact.

- If "adequate" is taken to mean a demonstration of intent through a substantial commitment of corporate resources, there is good reason to believe that industry efforts are in fact adequate. Anheuser-Busch is proud to present to the Subcommittee information on our many programs which address the alcohol abuse problem, and Mr. Shea, representing the U.S. Brewers Association, is providing information on other industry efforts in this area.

- Finally, if "adequate" is taken to mean providing a particularly beneficial contribution to promoting responsible consumption . . . then here, too, industry efforts can be termed adequate. Instances of abuse are *declining* in our society, and our industry has played a meaningful role in bringing this about.

Certainly, more can and will be done. But the fact is that voluntary efforts undertaken by the beer, wine and broadcast industries constitute a uniquely persuasive voice that cannot be replaced by government, or by government-mandated counter messages.

As the departments of Treasury and Health and Human Services noted in their 1980 "Report to the President and Congress on Health Hazards Associated with Alcohol and Methods to Inform the General Public of these Hazards":

> "Several communications experts (have) cautioned that the public generally is feeling 'over warned' by the government. Dr. Amitai Etzioni, for example, wrote 'that growing segments of the public ignore more and more of such (government) warnings because they feel they cannot heed the recent avalanche of warnings. People seem to particularly resent being 'warned' about negative consequences likely to result from use of products which they enjoy consuming, which may appear to relieve stress, and about which they feel personally knowledgeable and comfortable."

That is, government warnings . . . or government-mandated counter-advertisements . . . would by the very fact that they are associated with the government be discounted by large segments of the population. Voluntary industry actions, on the other hand, are free from that disadvantage. In fact, since such moderation messages come from companies that have an economic stake in consumption, they are uniquely persuasive.

The findings reported to the President and Congress in 1980 are consistent with those of Mulford and Fitzgerald in their 1983 study of drinking patterns in Iowa. The researchers argued that:

> ". . . strong negative attitudes toward alcohol misuse, together with some relaxation of emotionally charged negative attitudes toward any drinking at all, may be the most reasonable explanation of how Iowans managed to increase their consumption so much without any increase in problem drinking. Perhaps the climate of attitudes that most effectively prevents alcohol misuse consists of relaxed sentiments, and even indifference, regarding any drinking at all, but universal, strong, negative attitudes toward alcohol misuse."

Once again, the voluntary efforts of broadcasters, brewers and vintners in promoting responsible consumption make a unique contribution to establishing the climate of opinion described by Mulford and Fitzgerald . . . a contribution that would be eliminated by heavy-handed government manipulation.

In this context, it is instructive to review several aspects of Anheuser-Busch's efforts to promote the responsible consumption of its products. A comprehensive discussion of these programs has been provided to the Subcommittee. For the purpose of brevity, however, let us focus on the community-level elements of our programs and the broadcast moderation campaign we have undertaken.

Our voluntary community programs . . . implemented by members of our wholesaler family . . . provide reminders about responsible drinking to the consumer at the point of purchase, where it can have the most immediate impact on behavior. Importantly, these efforts enlist the support of the retailer, mobilizing his personal relationship with the consumer in the effort to head off an abuse situation.

Similarly, our broadcast moderation ads are intended to reinforce existing attitudes in favor of moderation and personal responsibility. Just as a beer ad cannot create demand for our products where none would otherwise exist, our moderation ads cannot imbue consumers with a sense of personal responsibility. They can, however, strengthen such a sense by urging moderation in a non-threatening, non-accusatory way.

Obviously, Anheuser-Busch is not "anti-drinking." But we have demonstrated, by our actions, that we are anti-abuse. And more importantly, we have demonstrated our position in a fashion that is more persuasive to our customers than any government-mandated counter-ad could ever be.

Brewers, vintners and broadcasters represent a unique and significant tool in addressing the problem of alcohol abuse . . . a tool that could be totally eliminated if their voluntary efforts to promote responsible consumption are replaced by government-mandated programs. A cooperative effort, combining the public and private sectors, is the best way to address alcohol abuse.

CONCLUSION

While neither Anheuser-Busch, nor any other member of the brewing industry, would contend that the problem of alcohol abuse is unworthy of the Subcommittee's concern, the solutions under consideration offer little hope of providing a meaningful benefit.

Our industry, and the advertising that supports our products, is already very highly regulated. Two federal agencies, and the laws and regulations of the 50 states, control almost every aspect of our industry's operations. Additionally, the television networks apply their own, very stringent standards to our advertising. Clearly additional restrictions, merely for the sake of restriction, are not called for.

Extension of the Fairness Doctrine to cover beer and wine ads, or any other type of commercial advertising, would open a "Pandora's box" of problems. Even more importantly for the immediate discussion, there is no indication that such a course would meaningfully address alcohol abuse.

Enactment of some other type of "counter-advertising" requirement would suffer from the same difficulty, while raising serious Constitutional questions. Additionally, the coercive intent of the government in adopting such a course would alienate many consumers . . . trading workable industry programs that are currently in place for the problematical benefits of heavy-handed government intervention.

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Mr. **Wirth**. Gentlemen, we thank you all very much. Let me see if I could start with suggesting that there is some consensus on this issue that broadcasters believe that alcohol problems are serious enough throughout the country to undertake a voluntary program of educational spots and PSA's. SMART and others believe that counterads ought to be mandated. So do we agree at least going in that the issue has become whether the voluntary efforts of broadcasters are sufficient, or whether counterads should be mandated? That is the issue in front of the Congress today.

Do you agree with that, Mr. Fritts?

Mr. **Fritts**. Mr. Chairman, I would agree with your opening statement wherein you suggested that the burden of proof should be on the proponents of counterads.

Mr. **Wirth**. Let me ask the question again. Has the issue really become whether the voluntary efforts of broadcasters are sufficient, or whether counterads should be mandated?

Mr. **Fritts**. I think the issue before this Congress is whether broadcasters are responding to the needs of their local communities. I think evidence has shown that through the National Association of Broadcasters campaigns, the campaigns of Taft broadcasting and others, this issue has risen to a high level of importance and concern across the country.

Mr. **Wirth**. Mr. Jacobson.

Mr. **Jacobson**. I think you put your finger right on it. That is really the main issue right now, particularly with Congressman Seiberling's bill before the Congress.

Mr. **Wirth**. Any other comments?

We want to take the next step. If we accept a voluntary counterad solution to a severe problem rather than a legislative solution to a severe problem, then we have to ask what assurance does the Congress or the public have that when this issue fades away, that the broadcasting industry will then continue to devote substantial time to running PSA's?

Mr. **Fritts**. Mr. Chairman, I would like to expand on our commitment at the National Association of Broadcasters. As I stated in our opening statement, we pledge to this Congress and to the subcommittee that we will be ever vigilant in responding to the needs of the community. As long as alcoholism, drunk driving and the effects of misuse of alcohol are of concern to the local communities in America, NAB and their stations will be responding to those concerns.

Certainly, this subcommittee has the opportunity at any time in the future to offer legislation or hold hearings to determine if we are responding to those community needs.

Mr. **Taft**. I would like to add to that a little bit. I think we should point out and realize that a lot of these efforts that I mentioned in my remarks and others—and you have all mentioned to some degree—have taken place well in advance of this current initiative. I think it is a recognition on the part of broadcasters that there is abuse of beer and wine. It is a problem and it should be dealt with.

I, personally, think that coordinated local efforts not necessarily done in one spot a week or one spot a month, but using all kinds of different methods to get at the problem, are the most effective way to deal with this. As we have dealt with these various problems at a certain season of the year, not necessarily doing the same amount every month. I think that is the kind of effective thing we can do on a voluntary basis.

Mr. **Wirth**. There is another approach, such as that of the Wine Institute; they have developed a code for advertising, developed a context for the ads, and that presents a framework different from the counterad approach or the PSA approach.

Now, advertisers have claimed that alcohol ads airing during sports programs are geared to reach the older sports audience. And the advertisers will claim that therefore, their ads were not targeted for people under the age of 21.

So they have devoted a lot of their television advertising 80 or 90 percent, to that kind of sports programming, arguing that that is for people over the age of 21.

But another advertiser devotes an enormous part of their television ad budget, 88 percent, to the same sports programming, and that is the Armed Forces. Now, presumably the Armed Forces are after that group that is under the age of 21, and I don't think the Armed Forces predominantly are recruiting people over the age of 21.

Now on the one hand, the advertisers are claiming that alcohol ads during sports programs are aimed at an older audience, and that is the context they are gearing for, but the military, recruiting people out of high school, are going in the other direction. Maybe context doesn't work.

Mr. DeLuca, do you have any response to that?

Mr. **DeLuca**. Yes. To answer not only this question but your leading question. You asked whether the alternative was voluntary or counteradvertising. There is another option before the Congress.

We, in 1979 and 1981, petitioned the Bureau of Alcohol, Tobacco and Firearms to mandate the code of advertising. In other words, there is a third choice. That is, by regulation to adopt a code so that it is universal, so that it is not just simply the California wine industry or others who may want to adopt that. And therefore, the petition before you today by us would be that we ask this committee to assist us in getting the administration to adopt as a regulation our code of advertising for vintner advertising.

And it would answer the question of context; it would answer the question of volunteerism, and it would be submitted to the Executive Office through the regulatory approach, asking for comments from the public.

We have talked about how emotional this issue is, and one way to sort this out is to have public participation in the regulatory process.

Mr. **Wirth**. Mr. Shea, let me ask you what your response is to Mr. De Luca's suggestion. Second, how do you respond to the advertisers' claim that the revenues going in are going after the over-21 age group in terms of beer, but the under-21 age group in terms of the Armed Forces.

Mr. **Shea**. First, I would suggest that one of the advertisers is perhaps wasting its money. However, I believe the threshold question which you asked initially, Mr. Chairman, is: Do the ads cause the problem? That seems to me to be the threshold question before this committee if it is to consider either a ban or mandatory counteradvertising.

Lacking such scientific proof, it would seem to be an ill-considered legislative move to mandate either a ban or counteradvertising.

Moving on to the codes, like the Wine Institute, the brewing industry has had a code since the 1940's for its own product, beer, which although containing the same ethyl alcohol as wine is a different product and it is advertised differently because it is consumed differently. We have pledged to adhere to that code. And I might add that participating in the most recent revisions were not just domestic brewers but beer importers as well.

As far as the final question on sports programming, the advertising agencies and perhaps the networks would be far more qualified to answer that than I. But I understand that the average viewing age for most sports programming is almost 50 years of age.

Mr. WIRTH. There are a lot of old folks going into the military, I guess.

Mr. Banzhaf, let me ask you to respond and then I'll go on to Mr. Swift.

Mr. BANZHAF. I would like to respond to two of the issues that you have raised. First of all, with regard to the reply time approach, I think everybody here at this table has taken the view that the message is aimed at the problems of drinking; that they have been effective. The broadcasters have taken that view; they have demonstrated that they are doing them. They have claimed remarkable success with them.

So I think we all assume that if there were more of them up to a certain point, that they would be effective in dealing with the problem of drinking, and this would be true whether or not the ads themselves caused the problem. The very fact that they are running out of these PSA's, all of these specials, all of these announcements that they are claiming various drops; that they are cooperating with so many authorities, indicates I think that it is an effective approach to the problem, or at least they so believe.

The question then would be: Should we rely on this or should Congress require more?

With regard to the question of whether they are voluntary; that is, whether they were stepped up perhaps because of this issue and whether they will continue if Congress does nothing, I think perhaps one of the best indications of this might be with regard to what they do to the other major product category which is comparable—that is, cigarettes. They are certainly comparable. I think cigarettes are probably more dangerous.

They have submitted to this committee a great deal of information as to how much they have done with regard to alcohol where they are under some compulsion or legislative gun. I would suggest, Mr. Chairman, that they be asked to submit the comparable data with regard to cigarettes and tobacco.

So far as I know, not a single network has run a full-time special on the issue of cigarettes since the Surgeon General's report in 1964. The only exception was a political program CBS ran on lobbying. The level of the PSA's is much lower I believe than those with regard to alcohol problems. I have no indication of the kind of cooperation they claim here concerning the alcohol problem with regard to tobacco.

I would ask, Mr. Chairman, that you make that request of the people who have submitted this data, so that your committee will have the comparable data that you can make that judgment. And if there is, in fact, a difference, perhaps they can explain why they feel the problem of alcohol is so much more important than the problem of tobacco.

Mr. WIRTH. Gentlemen, I thank you. Clearly, all of you recognize that there is a problem out there. The broadcasters have approached it one way with PSA's and the educational efforts that Mr. Fritts has talked about. The Wine Institute has taken a different kind of an approach I think; what I would call a contextual approach. And there is a third approach, saying that Congress ought to take further steps either legislatively or by urging regulation.

Mr. Swift.

Mr. SWIFT. Thank you very much. I would like to make a quick comment on what Professor Banzhaf has just said. In noting that broadcasters carry few or no public service announcements on smoking. I would point out that they do carry Lung Association ads. And interestingly enough, even the Lung Association is not any longer concentrating solely on smoking with its particular forms of advertising.

I would further suggest that it is the charge of the local broadcaster to respond to a wide range of issues, and if we ask for the kinds of information that the professor suggested, I suggest we find out what all the topics are that broadcasters have been responding to and then, what emphasis they have been making on the cigarette and smoking counteradvertising, in relation to that context.

I would also point out that—as I did in my opening statement—that one of the reasons there has been an enormous concentration on alcohol abuse, particularly drunk driving, is not because it is just something the broadcasters thought up. An organization called Mothers Against Drunk Driving made an enormous public issue of it and the broadcasters responded to the issue as it grew in the awareness of the public. And then you have the "who-is-leading-whom" kind of effect. But I think it started with citizens; it started with MADD. Broadcasters responded, and they amplified the message that MADD had.

And if the issue is perceived to have been partially solved or will go away or simply become uninteresting to the public, I'm afraid the broadcasters, responding as they do to public concerns, will, in fact, probably reduce their emphasis of it. I do not think that's anything that is particularly unusual nor anything about which anybody should be suspicious.

Now, a couple of questions. Clearly, if we adopt this bill we are setting a very significant precedent in the kinds of statutes that Congress passes. And we ought to know exactly what it is we're doing. I would appreciate it if any of the witnesses could give us or direct us to hard evidence of a clear correlation between beer and wine advertising and abuse of those two products.

Mr. JACOBSON. I would like to address that. First, it is not going to be any single or simple study that can relate advertising expenditures to alcohol abuse. There are a tremendous number of factors that impinge on consumption and on drinking behavior: Price, age distribution of the population, cultural habits, educational programs, a whole wide range of things.

It is appropriate to look at a number of things. One is that question: Does advertising tend to promote sales? The broadcasters have been very responsible with regard to hard liquor advertising; they reject it. Hard liquor sales have been declining in 9 out of the past 10 years. Fifteen years ago, liquor comprised 50 percent of the alcohol; now it only comprises about one-third.

Mr. SWIFT. I want to give you every opportunity and I am sure that material is in the record or you may submit it for the record. But what I asked for was a correlation between the advertising and abuse of the product. I think it is very important to direct this to abuse.

Mr. JACOBSON. It is a two-step stage. One is, does advertising tend to promote consumption. And outside of the public relations people for the beer and broadcasting industries, I think everybody agrees that it does.

And then the second step is does consumption tend to parallel abuse. And again, most of the experts in the alcohol field feel that it does.

Mr. SWIFT. You are taking essentially the position that beer and wine are inherently a harmful product, like cigarettes.

Mr. JACOBSON. The more people drink the more likely it is that there will be alcohol abuse.

Mr. SWIFT. You cannot have it both ways, and you are trying to create for yourself a situation where you can flop off on either side of this as the need comes.

In your judgment, are beer and wine, as products, intrinsically harmful, as most people agree tobacco is? Or are they not? Are they only harmful when abused?

Mr. JACOBSON. There is no one-word answer for that. For some people, they are always harmful. Recovering alcoholics. They increase the risk of incidence of alcoholism in young people. Children of alcoholics.

Mr. SWIFT. Does anybody have——

Mr. BANZHAF. There is a developing body of evidence concerning addiction, the characteristics of addicts, whether there is an addictive personality that tends to become addicted to tobacco, to alcohol, perhaps even to gambling. And I think there is also indication in the literature that alcoholics consume a very substantial proportion of alcoholic beverages.

So I would like to repeat my earlier suggestion. I think the best place to look for this kind of evidence would not be in the 1966 literature study since there is no major funding source for this. Very little money goes into it. But rather, to use the subpoena power of the Congress of the Federal Trade Commission to get the documents from the advertisers, the manufacturers and so on and look and see have they concentrated on what kind of ads would appeal to the addict? Do they have any figures as to how different kinds of approaches tend to impact on them? And then make a judgment.

Mr. SWIFT. Let me ask a question. That idea intrigued me. I think it is not a bad idea at all.

I had a friend who worked for an advertising agency and was talking with a man who produced headache remedy commercials. And he says, "How come all of those commercials do that [indicating loud, intense visuals]? And, he was told, "Because if we just sell aspirin to people who occasionally get headaches, we don't sell very many aspirin. But if we can take the hypochondriac who is always popping aspirin and give him a headache, then we sell a lot of aspirin."

So I think your point is well taken. Would you then suggest that perhaps we should go into all the records of the advertising agencies that handle headache remedies and determine what they are doing?

Mr. **Banzhaf**. Mr. Swift, I think any argument, any approach, can be carried too far to too much of an extreme.

Mr. **Swift**. Aspirin, if abused, is extremely harmful to your health.

Mr. **Banzhaf**. That's true. Do you know how many people are killed each year by abuse of aspirin? I don't think anybody here does, nor do I know of any studies that have been done about the number of people killed by hamburgers or ice cream or some of the other examples.

Mr. **Swift**. Or the guy who died in England from drinking too much water. You can carry it to an extreme, but that's not what I'm trying to do.

Mr. **Banzhaf**. If you look at the top product killers and see if there is a problem——

Mr. **Swift**. Why not the top six? Why not the top seven? Why not the top 100?

Mr. **Banzhaf**. Because the 100 is going too far.

Mr. **Swift**. The question we have to face is: We are being asked, if we undertake to pass this legislation, to establish a precedent. The question is whether it's the top five or the top 100, whether aspirin should be included. All of those are not—I'm not trying to make fun of your suggestion at all. It's just that we're opening a Pandora's box in which we find all of the questions that I'm asking you. And I think before we open that box we ought to know how we are going to deal with those questions that will flow naturally and logically from our actions.

Mr. **Banzhaf**. It is not that much of a precedent, nor are you opening the box. The Congress already severely restricts advertising for certain drugs for a variety of— financial advertising, the so-called tombstone variety. You have already, with other products——

Mr. **Swift**. Because of potential abuse of the products?

Mr. **Banzhaf**. Yes.

Mr. **Swift**. Name one.

Mr. **Banzhaf**. Many of our commercial drugs are very severely restricted in terms of the advertising claims they can make.

Former Secretary Califano answered your question. He took on an anticigarette campaign. In response to the question between cigarettes and drinking, he said he could not see smoking in moderation but he could definitely see drinking in moderation as one of the major distinctions. His answer was that there is not an inherent danger in terms of the product itself.

In all of your packets that you have there, you have a symposium by the University of California San Francisco Medical School called "Wine, Health and Society." You could make the case that there is just as much scientific and medical evidence building up in terms of the salutary effects of beer, wine and spirits in terms of high density proteins, the cardiovascular effects of drinking in moderation, the effect of wine on diabetes, wine in nutrition, beer and wine in terms of nutrition.

Mr. **DeLuca**. In other words, there is a body of literature that just came out in terms of the American Journal of Medicine in terms of the salutary effects of drinking in moderation. Now, that would answer the question whether a product is inherently by itself bad or good. The whole emphasis here has got to be in terms of use and misuse, and if there is anything that disturbs our constituents more about the Seiberling it is the blurring between the distinction between use and misuse.

Mr. **Swift**. I have a lot of egg growers in my district, and they are very upset right now because the Department of Agriculture insists on publishing things about eggs that talk about cholesterol. It really bothers them. Is it some terribly wild leap in logic to suggest that if we set this precedent, that people might reasonably and rationally petition for counteradvertising for eggs, to raise the issues of cholesterol because, while the egg is healthy in these ways, it has a downside, it has a lot of cholesterol in it? Cholesterol we assume is not good for you. Is that an irrational extrapolation from the precedent this bill would ask you to take?

Mr. **DeLuca**. There is a flawed logic here because you can apply it to salt and sugar. The flawed logic in this whole approach is that if a product can be abused and therefore become part of a social issue in your own country, then its moderate behavior has to also be condemned.

Mr. **Swift**. I would like to ask Mr. Lynn if he feels that my analogy, my egg example, seems exaggerated to you? Do they seem unreasonable or illogical to you? Or are we opening a door with this precedent?

Mr. **Lynn**. They in no way sound facetious or irrational. In fact, I believe it was the Center for Science in the Public Interest that recently began a campaign to criticize the commercials of the egg board, not simply because of the issue of cholesterol, but because they felt that they were promoting too positive an image of the nutritional value of eggs.

So I think, in fact, there is always an impetus to suppress images and ideas and commercials that we do not like. Different people do not like different things. But once you open the box to nationally-mandated equivalency time, I think you are on a very, very slippery slope very, very quickly.

Mr. **Banzhaf**. The FTC dealt with egg advertisements. The egg board was running ads in which it said there was no scientific evidence whatsoever that eating additional eggs increases your risk of heart attack. There was an FTC proceeding. The FTC issued a cease and desist order.

Mr. **Swift**. That is a different thing.

Mr. **Banzhaf**. It is an alternative way of dealing with the problem.

Mr. **Swift**. It is a different issue. I have no problem with making egg people or beer people or wine people tell the truth about their product. I don't have any problem with that.

Mr. **Banzhaf**. If telling the truth means revealing all material facts, that is a justification for a variety of approaches. It is not a unique thing.

Mr. **Swift**. Do you know what the codicil on an average advertisement would be if the bread manufacturers and the automobile manufacturers and the tea manufacturers.

Mr. **Wirth**. And politicians?

Mr. **Swift**. The disclaimer there would trigger equal time beyond belief.

Mr. Banzhaf. That is the "parade of horribles" argument, which we rule out in court, usually.

Mr. **Swift**. I just submit that I have asked a totally independent witness who does not have any interest in one side or the other if I have paraded a series of horribles, extremes, facetious, silly and irrelevant things, and at least in his judgment, I have not. And the only thing you have rebutted me with is something that is a different case all together, namely, misleading advertising.

Yes, sir.

Mr. **Shea**. As a followup to Mr. DeLuca's comments, I would like to offer for the committee's consideration, and it is part of our written testimony, a comment made in a Washington Post interview last November by Dr. William Pollin, who then served as the Director of the National Institute on Drug Abuse. He said the following:

> The key comparison we can make is that 90 percent of current drinkers in this country are quite comfortable and able to control their intake, and thus are not in any sense addicted to alcohol. The ratio is almost reversed in regard to cigarettes.
>
> All of the surveys show that 60 percent to 90 percent of smokers would very much like to cut down or quit and are unable to do so.

In view of that, I think what we are really talking about here is the abuse of the product, not the use of the product, and there is recent medical evidence to which Mr. DeLuca alluded, showing that moderate consumption may, in fact, not only be neutral but there may indeed be some beneficial aspects to it.

Mr. **Swift**. I have overused my time. I want to explore the same line of reasoning as the ads relate to young people. If anybody can tell me why adolescents do what they do, every parent in America would gladly contribute a dollar to that person.

I quit smoking because a little, blond-haired girl reached up and grabbed my hand and said, "Daddy, I don't want you to die." She is 23 years old now and smokes a pack of cigarettes a day.

She started in her adolescent years, after I had quit, after the cigarette ban took effect, after both television and the movies substantially deglamorized the use of cigarettes, and still she smokes. And she started in that mysterious period, that black hole we all entered about 13 and re-emerge at 19. And no one, least of all, I think, the adolescents, know exactly why they do what they do in that period. But I have yet to see anybody that needed a television ad to get them to start smoking, to get them to start drinking, or for them to discover sex.

Thank you.

Mr. **Wirth**. This hearing gets more interesting all the time.

Mr. **Nielson**. Congressman Swift always puts me in a bad spot. Can you arrange for me to follow somebody else next time?

Mr. **Luken**. Do you want me to take your time?

Mr. **Nielson**. I would like to ask some questions of several of the witnesses. We have some conflicting evidence today, and I would like to first commend the broadcasters for the bans that they have made and the various policies they have established.

I have before me the statement of NAB and also the CBS, NBC, and ABC. Let me read just a few of them and then ask a question whether you think these are being followed.

Mr. Jacobson indicated these ads are being put on the air in such a way that they attract additional consumption, they get people to start drinking that might not otherwise do it, and I want to see if they followed these statements.

This happens to be NBC, but the others are similar to it. One of them says the advertising of beer, malt, wine products is acceptable only when portrayed in good taste, consistent with applicable Federal and local laws and in conformance with the NBC alcohol products advertising guidelines.

Do you believe, Mr. Jacobson, that the beer ads are being portrayed in good taste, in general?

Mr. **Jacobson**. Well, there is a whole variety. I think——

Mr. **Nielson**. Just yes or no.

Mr. **Jacobson**. In general, do I think they are portrayed in good taste? No. And neither does——

Mr. **Nielson**. That's what I wanted. OK.

Mr. Fritts, a rebuttal?

Mr. **Fritts**. Yes.

Mr. **Nielson**. All right. The next question. This is the one I have most difficulty with.

> The use of alcoholic beverages or products shall not be portrayed as being necessary to maintain social status, obtain personal achievement, relieve stress, or as a solution to personal problems.

In your view, Mr. Jacobson, do you feel that they are violating that standard?

Mr. **Jacobson**. Hundreds of times a year.

Mr. **Nielson**. Mr. Banzhaf.

Mr. **Banzhaf**. I don't watch television that much. I don't have any personal knowledge of that.

Mr. **Nielson**. OK, another one. "The use of alcoholic beverages or products shall not be promoted as a mark of adulthood or rite of passage." Do you think that is violated in some of the ads?

Mr. **Jacobson**. Routinely.

Mr. **Nielson**. Routinely. Mr. Fritts, would you like to comment on either of those?

Mr. **Fritts**. I think those are very subjective, but overall I would say that the networks individually and separately, one with another, have their own serious set of guidelines which they adhere to. I must also say that in all fairness, a substantial number of commercials, for not only beer and wine but for a whole plethora of products, are routinely rejected because they don't meet the network standards.

Mr. NIELSON. Let me make a couple of comments. I saw several ads today, and some of them said—they are counter ads and I commend you for them—but one of them said, "I'm not asking you not to drink." Another one said, "Drink sensibly, use your head," or "You're reaching the age of drinking, don't do it if you plan to drive."

Would those suggest violation of the rite of passage or adult activities to you, Mr. Fritts.

Mr. FRITTS. Mr. Nielson, I would suggest that to me they suggest a responsible attitude and promulgation of a responsible attitude as one enters the rites of passage.

Mr. NIELSON. Let me ask this question. Why do you put in your ads always the statement, "We're not asking you not to drink, but if you drink, don't drive." Why do you do that? Why don't you just simply say, "Don't drink and drive," rather than adding the disclaimer that we're not asking you not to drink, or drinking's perfectly all right but you shouldn't drive if you drink.

Why do you always emphasize we're not trying to ask you not to drink?

Mr. FRITTS. We don't. You saw two samples of literally hundreds of various public service announcements.

Mr. NIELSON. Both of them did that.

Mr. FRITTS. Both PSA's did that, but those were selected for this subcommittee because of the star quality, if you will, of those who were trying to influence our young people as they approach the rites of passage. I think that certainly is important.

It is also important to note that historically, 35 percent of the population has not chosen to partake of alcoholic beverages; 65 percent of the population does, and of the 65 percent which does, 90 percent do it responsibly and in moderation. Those figures, despite advertising, and young people coming through the rites of passage, have remained constant and have not increased.

Mr. NIELSON. Mr. Lynn, you say that advertising does not increase consumption. Mr. Jacobson claims it does, Mr. Banzhaf claims it does. What evidence do you have to make the statement that advertising has not increased consumption of beer?

Mr. LYNN. What I suggested was that in the studies, including the 66 that were evaluated by the Federal Trade Commission, we cannot say with assurance that there is an increase in consumption. We can show that at most these studies, including Mr. Atkins' study—and I'm sure he will speak about this later—show that for some people, they do seem to consume more, at least after they see heavy doses of advertising. But that is not a very surprising study and it alone does not justify regulation.

Mr. NIELSON. Let's take an example. Dr. Johnston, do you have a comment?

Mr. JOHNSTON. Yes. I think this is the central issue in what you are discussing. It seems to me there is some evidence that advertising does affect consumption, and certainly there is evidence in other product areas, like cigarettes. But it seems to me—and this may sound funny coming from a scientist—that we ought not suspend common sense while we wait for a scientific answer. I do not think there is ever going to be the final answer to this, and the reason is this.

In a society in which advertising totally permeates the society, you cannot set aside an experimental group of youngsters and let them grow up without beer advertising. It is not possible in this society. That is the only experiment that would really answer it in the long run. I think the impact of advertising starts when you are 2 years old, when you first start to look at the tube. Kids are watching that for 10 or 15 years before they make a decision about drinking.

Mr. DeLuca. Dr. Johnston's reference to the age of 2—I was 3 years old as a member of an immigrant Italian family in New York City when I was first exposed to wine as part of the table. I have done the same thing with my three teenaged children. At the age of 3 and 4, each one as part of the table was given a little wine at mealtime. I submit that was the best education I could have given my children.

Now, they would have shown up in Dr. Johnston's statistics as teenagers or even as youngsters drinking an alcoholic beverage, but in our family, with our culture, with our heritage, that was the way for thousands of years people have been exposed to this product.

So when you are talking about statistics or advertising, you have to really get to the whole issue of cultural context. The Soviet Union does not have advertising. By every account, they are one of the leading nations in the world in terms of alcoholism and alcohol abuse. So when you are probing and going into the question of advertising, obviously you have to look at religious and ethnic and historical heritage.

Mr. Nielson. Mr. Shea, do you want to comment on this?

Mr. Shea. I would just note that the chart we prepared in the front of the room demonstrates that beer consumption over the past 5 years has gone down each and every year, and advertising expenditures at the same time have gone up each and every year. So in direct response to your question, there does not appear to be a connection between increasing advertising expenditures and increasing consumption.

Mr. Nielson. Let me ask a theoretical question and ask you and Mr. DeLuca and Mr. Jacobson all to answer the question, and maybe Mr. Fritts as well. Let's assume for the moment that we do have a scientific study. Most of you have said the studies don't show any relationship. Some of you have said they do. The reason for my suggesting we find out for sure before we take any drastic steps such as to ban or counter advertise is to find out if we could design a scientific study—which I admit, Dr. Johnston, would be difficult to do because of the length of time it takes to handle it and the voluntary nature of choosing sides and so on, and I recognize those problems—but supposing we did have a study.

Supposing the study showed that it actually caused people to drink more, and the increased drinking did, in fact, lead to abuse. Supposing we established that, unlikely as it may seem to you from your vantage point. Supposing we had established that. Would you then object to a ban or a counter advertising campaign?

Mr. DeLuca. We approached that question by petitioning the Bureau of Alcohol, Tobacco and Firearms to go through a regulatory process and to have that kind of information before it, from the public, from experts, from scientific medical evidence with regard to having a regulatory response, not just a legislative response.

Mr. **Nielson**. If it showed that, would you then accept the Seiberling approach?

Mr. **DeLuca**. The Seiberling approach, as I said, is flawed. It does not make the distinction between use and abuse. In fact, if anything, it blurs it. Again, I get back to the response as far as the wine community is concerned. We have a code. We think it is a tough code. We voluntarily have adhered to it. We would like to see it as a Government regulation even though—in general we oppose Government regulations, but we think the issue is so important that it should be mandated rather than voluntary.

Mr. **Shea**. You made an important distinction. An increase in consumption does not necessarily mean an increase in abuse.

Mr. **Neilson**. If the study showed it increased consumption and that that increased consumption caused increased abuse, in that event, far-fetched as that may seem to you from your industry standpoint.

Mr. **Shea**. Far-fetched, indeed. I would like to clarify what is, perhaps, a confusion. Substantial evidence of no causation, which is apparently what the Federal Trade Commission and what several subcommittee witnesses are going to demonstrate, is far different from no evidence at all on the question.

Now, to get to your question directly, that were such a theoretical study to be done, our industry would obviously discontinue any advertising practice that caused abuse. But in lieu of that or absent such evidence that advertising in the aggregate—or individual ads—are causative of abuse, I don't think that our industry ought to be denied the right to use any legitimate medium to advertise its products.

Mr. **Ritter**. Would the gentleman from Utah yield?

Mr. **Nielson**. Yes.

Mr. **Ritter**. I think it raises an interesting point. I would ask the question: what if the study showed that the leading cause of alcohol abuse in teenagers was working mothers? Would we then—and I'm serious—would we then formulate legislation to somehow keep mothers in the home during the formative adolescent years? Would we formulate such legislation here in Congress?

What this study could show—this study could be a very interesting study, and I think Dr. Johnston might appreciate this as a sociologist—the possibilities of increasing teenage drunkenness, the causes of increased teenage drunken driving, for example, which is the abuse, bottom line, and drunkenness could be myriad, could be wholly unrelated to advertising.

Then I think we should be prepared here in the Congress, if we are at all logically consistent—which is saying, perhaps, too much for politicians—to move on the outcome of those results.

I yield back to the gentleman.

Mr. **Nielson**. Mr. Fritts, let me ask this. If the weight of scientific evidence on a study were to suggest that beer advertising caused additional consumption which in turn may have caused more abuse and the abuse would be far less without the advertising, would you as an association support the counter advertising or ban?

Mr. **Fritts**. I think it is hard to say exactly what we would support at this point in time, Congressman. I suspect that Congress would want to probably look very closely at banning the product itself if, in fact, there was that much abuse and that much concern and that much harm that it caused. I would say that certainly if that was the outcome of the study, that the Congress would want to look very seriously at abuse, at eliminating a legally-sold product.

Mr. **Nielson**. Even though we had experience with prohibition that did not work? We did not ban cigarettes when they cancelled the ads there. You are suggesting you would go further with this than we do with tobacco?

Mr. **Fritts**. I think it is interesting to note that smoking has not stopped because advertising has stopped on radio and television. It is interesting to see where the smoking dollars have gone. They have not been reduced. As a matter of fact, they have been increased substantially. They have just gone to other forms of media. So the promotional aspects of the cigarette industry have not been reduced. They have dramatically moved to other media.

Mr. **Nielson**. For your information, the proposal of mine is for all media, not just radio and broadcasting, which I think is one of the flaws of Mr. Seiberling's bill: it concentrates only on radio and television, which is not really fair to the rest of the—it's not fair to your organization.

Mr. **Fritts**. We do have concerns about it being discriminatory.

Mr. **Swift**. The gentleman from Ohio, Mr. Luken.

Mr. **Luken**. Thank you, Mr. Chairman.

I would like to go into the sophisticated, sexy and sociable issue. There is a theme that has been running through the testimony of more than one witness, that there is a corollary between the type of advertising, the targetting, I believe Professor Banzhaf has said, which is insidious because we are targetting youths to induce them to begin drinking because of the sophisticated, sexy and sociable issue that you have described.

Is that right, Professor? There is something insidious about this kind of advertising, which is, as you describe in your testimony—even though you don't watch television, you did describe it, that the dominant themes are youthful vigor, good health, good looks, personal, social, and the sex appeal issues.

Mr. **Banzhaf**. Mr. Luken, you are reading from the FTC description of cigarette ads, which have been off the air for over 10 years.

Mr. **Luken**. That is my point, and you have made that corollary. You said that if cigarette advertising is a problem because of 500,000 deaths—you made that point—then alcohol advertising, beer and wine advertising, which causes 100,000 deaths, that that would have a similar problem. And in the same context you talk about the type of advertising, that we should study that.

Isn't that what you said?

Mr. **Banzhaf**. I think you misread my testimony. I was asked to address——

Mr. **Luken**. I don't think I did.

Mr. **Banzhaf**. Let me try to explain it then, if I may. I was asked to address the question of whether there is any evidence that I can offer from my experience with cigarettes which might help this committee answer the central question of whether or not beer and wine commercials on radio and television tend to encourage either additional consumption or abuse.

I have been very frank with this committee that I have no direct evidence with regard to beer and wine messages.

Mr. **Luken**. You are just repeating that, but then you went on to say——

Mr. **Banzhaf**. If you would allow me to continue——

Mr. **Luken**. You are repeating what you said. Get to the point.

Mr. **Banzhaf**. The point is very simple. We have two industries which are very much alike in many ways. They make very similar claims. With regard to the tobacco industry, those claims were destroyed when the subpoena power was used to find out what was really going on. These people at this table can put in all kinds of self-serving statements and codes. I think you will get the answer——

Mr. **Luken**. You said that once and we heard all of that, but my point——

Mr. **Banzhaf**. Then what are you beating the dead horse over, sir?

Mr. **Luken**. I am pointing out to you that you are saying that alcohol and tobacco are equal, and I think it has been said over and over again that they are not.

Mr. **Banzhaf**. If you will turn to the last page of my testimony, I say they are not equal. I am far more concerned about cigarettes than alcohol. I think there are important differences between cigarettes and alcohol.

Mr. **Luken**. Then would you agree that a causal relationship between ads and abuse of a product is a necessary precondition before a product's advertisement should be subject to a counter-advertising campaign?

Mr. **Banzhaf**. No, I don't believe so, but let me also——

Mr. **Luken**. You are getting into a very subjective area.

Mr. **Banzhaf**. Let me read from my testimony, if I may, sir. It says, "On the other hand, alcohol causes far fewer deaths, is apparently addictive to a much smaller percentage of users, does not appear to be dangerous when used by most people in moderation, and has risks which have long been known. Thus, I am not taking a view one way or another. I recognize that there are similarities. I recognize that there are differences."

Mr. **Luken**. Would you agree that we should disregard this discussion about whether the advertising promotes sociability or sex appeal or sociability, personability because these happen to be aspects, qualities that youth is interested in? We are not really going into that aspect of it, are we, to see how it is targeted? That is what you suggest in your testimony.

Mr. **Banzhaf**. A central question that I was asked to——

Mr. **Luken**. Would you answer that question?

Mr. **Banzhaf**. Yes, sir.

Mr. **Luken**. Are we really going to target that, utilize that as a criteria?

Mr. **Banzhaf**. That is a necessary step in reaching the conclusion, if you would let me explain it, sir. The question was asked whether or not the ads lead to increased consumption. The people at the table are telling you the ads are designed only to switch from product to product. If you find in memos from the alcohol industry, as we did with the tobacco industry, that they were designed to encourage the consumption of the product by providing excuses and justifications for using the product by relating it to a wide variety of activities, that tends to undermine those assertions. It is not a final step; it is a step in a connective chain.

Mr. LUKEN. Let me suggest that that is strained and tortuous. What you are taking is the same kind of advertising that anybody else uses. I did not hear all of the people here at the table say that they were only trying to persuade people to go from one product to another.

Mr. BANZHAF. Why don't we ask them if the ads are designed to increase consumption?

Mr. LUKEN. It may be inducement to use the product, but there is a difference between increased consumption and abuse. I think that is an obvious fact that has been very much clouded, and I think it is clouded by the testimony that you gave on the subject. You are going into these issues that we have to go into, such questions as how the advertising is targetted; that this is, to me, getting down to insidious kinds of a thing.

We are talking about freedom of expression, eventually. It may be with regard to a product. And then when we get around to the surveys, we are talking about—my good friend from Utah is talking about if this is proved scientifically in a survey. I think the surveys, depending on who hires them, on attitudes are going to conflict diametrically. It is a common experience.

So we are not going to have any scientific proof in the method that you suggest. We are not going to have any scientific proof about the type of advertising as to who they target and come up with conclusions. Are you suggesting that we will?

Mr. BANZHAF. I suggested that only to urge you to issue a subpoena. Once you issue the subpoena, you can get the data and judge the result for yourself.

Mr. LUKEN. Get data so we can do our own survey, and then they can do a survey over here.

Mr. BANZHAF. No, there is a difference between a survey and a subpoena. They both start with "s," but a subpoena requires people to give up documents which they may not wish to give up because they contain information which is adverse to them.

I was also asked by the chairman to discuss the question of whether or not the ads increase consumption in addition to whether or not they increase abuse. That is what I was asked. That is what I am trying to respond to.

Mr. LUKEN. Let me just—we are running short of time. I will try to conclude.

Mr. Taft, as a consumer in an area that you serve, I can attest to something that has been testified to, and that is, as a consumer who views television from time to time, I have felt the influence of the PSA's not just on the MADD service announcements but on others as to abuse of alcohol of different types, and also in your news, not only on your station but on others.

It seems to me that we have been getting pretty good—not treatment—but pretty good exposure to the problems of alcohol, as I stated in my opening statement. Would you want to comment on that?

Mr. **Taft**. That was the thrust of my remarks. I think a much more effective job can be done through those PSA's and coordinated efforts in the community using print media, using other kinds of techniques to have a real impact on this issue. I think if we were just to sit there with mandated spots, I just don't think it would have the same kind of impact on the population.

Mr. **Jacobson**. I want to touch on this, but I want to get back to your question to Mr. Banzhaf about alcohol consumption and abuse——

Mr. **Luken**. If I had the time, I was going to talk to you about it, too.

Mr. **Jacobson**. Use is related to abuse. Every foreign country that I know of where consumption has gone down, problems have gone down. France has enjoyed a one-third reduction in alcohol consumption in recent decades. Their alcoholism rates have gone down, cirrhosis has gone down. Sweden has found the same. Norway has found the same. And I think we will find the same in the United States.

The second thing I would like to say in response to these ads——

Mr. **Luken**. Through controlled advertising?

Mr. **Jacobson**. You can't separate it out. I agree with you that you will never get a perfect study. The Swedes, for instance, have banned—they never had broadcast advertising for alcohol. The Norwegians the same. They banned all print advertising, and sales went down. There are other things going on in the society. It is not a one-dimensional thing.

I would like to address the public service announcements. You have been seeing more, but what do the public service announcements actually say? "Know when to say when." What does that say to a kid who likes 10 bottles of beer? The ads generally condone drinking, as Mr. Nielson brought up: you can get drunk; just don't drive while you're drunk.

Mr. **Luken**. I think they have been all over the lot. The public service announcement and the news articles that I have been seeing are a wide variety. The alcholism public service announcements, I have seen those on television. I have heard them on the radio.

But since you brought up the subject, what you go on to say in your written testimony but which you didn't get around to because of time limitations in your oral testimony was that you want to go on with further controls. You want to bar the use of athletes and celebrities in such ads. You want to eliminate advertising appeals that suggest heavy drinking or excessively rapid consumption, and you want to restrict the use of lifestyle ads that associate desirable social, sexual, athletic or economic outcomes with the use of an alcoholic beverage.

It seems to me you are getting into a real kind of straitjacket of thought control here. This is the kind of thing that the ban on advertising of beer and wine would lead to, this kind of Government control of exactly what kind of advertising will be put out. Now I must give you some time, and then I will withdraw.

Mr. **Jacobson**. There are two things that we are addressing. One is the content of the current ads, and then the absence of other information. The ads need to be cleaned up. Michael Mondavi, president of Mondavi Winery, said: "I think it's immoral how brewers are pandering to youth. Sex sells, but appealing that way to youth is improper."

Society has rules about the marketing of alcoholic beverages, more rules than any other product in society. The networks have rules, the producers have rules, the broadcasters association used to have rules, and the Bureau of Alcohol, Tobacco and Firearms has rules. The rules tend to be weak and not adhered to. We want to see them improved.

The second thing is getting across the other side of the story, and that is what the public service announcements would do, and it would ensure that the public service announcements will continue long after you and I and Mr. Fritts are on to other interests. We want that permanence.

Mr. **Luken**. As far as I am concerned, you have had the last word.

Thank you, Mr. Chairman, for your indulgence.

Mr. **Swift**. The other gentleman from Ohio, Mr. Oxley.

Mr. **Oxley**. Thank you, Mr. Chairman.

Mr. Jacobson, you had described in your earlier testimony a Harris poll. Am I correct in repeating that 57 percent of the people polled support a total ban on advertising for beer and wine?

Mr. **Jacobson**. On radio and television.

Mr. **Oxley**. On radio and television.

Mr. **Jacobson**. That's right.

Mr. **Oxley**. Mr. Fritts, I see your hand in the air.

Mr. **Fritts**. Because I have a conflicting poll, as someone talked about earlier. I cite now from the Opinion Research Corp. poll commissioned by NAB to try to get a feel for what is happening in the country. The poll found that 59 percent of adults approved of broadcast advertising of beer and wine, 37 percent disapproved, 4 percent had no opinion.

Stronger support for continued advertising was found among males—67 percent—and college graduates—64 percent—as well as those in higher income groups—63 percent—and in metropolitan areas—65 percent. Opinion Research Corp. an Arthur D. Little Co., conducted a national telephone poll of 1,005 adults during March 22-27, 1985.

Mr. **Oxley**. Mr. Fritts, was the question whether they would support a ban on media advertising for beer and wine put directly to the respondents? Was that question asked?

Mr. **Fritts**. Yes, it was. That was the question.

Mr. **Oxley**. I misread that. Your answer was whether they supported the concept of advertising in general. Wasn't that——

Mr. **Fritts**. No; there is a survey out that shows that 57 percent of the American public really considers advertising as an intrusion.

Mr. **Oxley**. Now, is that the Harris poll you are citing?

Mr. **Fritts**. I'm not citing the Harris poll, but the Opinion Research poll I'm citing is a poll which said: Should beer and wine advertising be permitted on radio and television?

Mr. **Oxley**. Be permitted. Not banned, but permitted.

Mr. **Fritts**. Should it be permitted. That's answer No. 1. Answer No. 2——

Mr. **Oxley**. That was the question from your pollster. The question from Mr. Harris apparently was in the negative; is that correct, Mr. Jacobson?

Mr. **Jacobson**. I believe it was. I might say that the Harris poll was sponsored by Business Week magazine. And if there is a disagreeing poll, I don't know what one can do.

Mr. **Oxley**. Well, Mr. Fritts, the Harris poll is, I think, accepted as a very reliable pollster. They tend to be a little more liberal than I might agree with, but the fact is that they are a representative polling firm throughout the country and recognized as such. How do you respond to the fact that 57 percent of those responding said that we ought to ban beer and wine advertising on television and radio? How do you respond to that? That puts you on the defensive, doesn't it?

Mr. **Fritts**. Principally because that question was asked after a series of five negative questions about cigarette advertising, and then they popped in the question on beer and wine advertising after the negative connotation had been established.

Mr. **Oxley**. What if it was 45 percent instead of 57 percent? Isn't there a significant body of people in this country who are opposed to the advertising of beer and wine on television? Would you concede that?

Mr. **Fritts**. I would concede that at least 37 percent, based on our poll. I would also point out that on radio and television, there are 100 million viewers nightly. There are 100 million beer drinkers across the country out of 240 million Americans, and 35 percent still choose not to imbibe.

Mr. **Oxley**. How do you respond to the suggestion that the professor had in regard to subpoenaing the records of the broadcast industry to get a better feel, a better information base that we could base future decisions on?

Mr. **Fritts**. I am thankful, No. 1, we don't live in a police state. No. 2, I would say that broadcasters have nothing to hide. I think we are in transition, Congressman, from an 18-year-old drinking age, where the target audience, or the youth of America, legitimately were at 18 years of age, and now that Congress has enacted the law—principally because of the Mothers Against Drunk Driving—to a 21-year-old drinking age, those strategies are changing.

I think that Anheuser-Busch correctly points out they don't allow anyone under 25 years of age to appear in any of their advertisements. I think that is rather significant. I think the industry is responding to the concerns not only of Congress but to the concerns of their local respective communities.

Mr. **Oxley**. Let me ask you this. You commented just a bit ago about the use of so-called star quality for the PSA's and that is what was very effective in presenting the PSA's, the quarterback for the Packers, and some other folks that are well known and have some degree of recognition, particularly among young people, athletes, and so forth.

If that is indeed effective, and I suspect it is, why isn't the opposite true, then, that those same people, as we saw in the Michael

Jackson look-alike ad for that wine and some others, why isn't that just as effective in encouraging young people to imbibe?

Mr. Fritts. Those were but two of several hundred public service announcements that are currently being aired.

Mr. Oxley. But the idea——

Mr. Fritts. The idea was to make sure that we get somebody who is a good role model for young people, who has an interest in the issue and who was willing to speak to the issue, such as the campaign we are conducting with Stevie Wonder tomorrow.

Mr. Oxley. OK. So Stevie Wonder is a good salesman for not overindulging in alcohol. It seems to me you can't have it both ways. You can't say, well, these guys are great in presenting their arguments against alcohol abuse, but at the same time you have people advertising and glorifying the use of alcohol to the same peer group. Isn't that true?

Mr. Fritts. You know, I think as one looks at the total mix of advertising on television, the Budweiser Clydesdales clomping through the snow, the Iowa farmers applauding as the torch comes trotting down on its way to Los Angeles, there is an awful lot of institutional advertising. Another example is the Coors announcement where the gentleman is on top of the mountain and he talks about the spring-fed hops and the quality of the water and that sort of thing.

It is my understanding the Bureau of Tobacco and Firearms has a study underway, and they will be appearing here later and can speak to your question.

Mr. Oxley. OK. Let me just ask one more question, if I may, and that is to Mr. Jacobson.

You seem to have backed off on the original premise of your group, which was to ban the advertising of beer and wine on television and radio. We see these petitions here, many from my State, many from my district, and just from the logo on there, the appearance is that these people are totally in favor of banning beer and wine on television and radio.

But you come to us this morning apparently with a retrenched position now arguing for the Seiberling approach as opposed to the total ban. Is that because you couldn't get enough support on the Hill for a total ban?

Mr. Jacobson. No; we started out suggesting the alternative, and I hope you will read some of the petitions from your constituents.

Mr. Oxley. I have.

Mr. Jacobson. We petitioned the President and Congress to ban all advertising for alcoholic beverages on radio and television or require broadcasters to give equal time for health messages about alcohol. We have always suggested the two alternatives. I personally feel an equal time approach would be more valuable because good information about alcohol is not getting out right now.

Mr. Oxley. So you think that providing the two alternatives is a more salable approach than the ban, which I assume you feel just doesn't have the support around here or perhaps in the country that maybe you thought originally you had.

Mr. Jacobson. People out in the country, some favor a total ban feeling it is just inappropriate to have these kinds of slick messages encouraging people to drink. There are other——

Mr. **Oxley**. Isn't it a fact also that a large portion of the people who are supporting your cause are basically prohibitionists, are totally against drinking of any kind, and they see this as an opportunity to vent their spleen or to give their views more widespread circulation? Isn't it a fact that a lot of people that support your cause would really go all the way, again, on the prohibition question and not just stop with the ban or the alternative that you suggested?

Mr. **Jacobson**. If you want to average all the surveys together, about half the population favors a ban on beer and wine commercials. I can't speak for all of them. Some of them might want to prohibit the beverage itself. We don't, the National Council on Alcoholism doesn't, the National PTA doesn't, United Methodist Church doesn't, the Church of Latter-day Saints doesn't. This is not a prohibitionist movement whatsoever.

Mr. **Oxley**. But you do have prohibitionist support within the movement.

Mr. **Jacobson**. There may be some people; but this is a public health movement, primarily. Alcohol problems cost our country $120 billion a year, according to the Congressional Office of Technology Assessment. We have got to address that problem and deal with it. One way is to ban the ads. Another would be to get equal time. We should have warning labels, massive educational efforts, a whole range of activities if our Nation is truly interested in minimizing alcohol problems.

Mr. **Oxley**. I am out of time. If Mr. Fritts would like to respond.

Mr. **Fritts**. Thank you. I would like to respond, inasmuch as Michael Jacobson has been gathering signatures for close to a year now. If 50 percent of the people in this country are for a ban, it is surprising that only a million people or so have signed on to this project, and I don't make light of those who have signed on to it because I am sure they are sincere, caring Americans who are sincere for whatever reasons, but I must say that if the attitude is 50 percent across the country, that this effort somewhat pales.

Mr. **Oxley**. Thank you, gentlemen.

Mr. **Wirth**. Mr. Scheuer.

Mr. **Scheuer**. Thank you, Mr. Chairman.

A recent Business Week Lou Harris poll reported that 57 percent of Americans want beer and wine ads banned from the air waves.

I would like to ask Mr. Fritts a question to clarify what in my mind is a seeming inconsistency. As I understand your position, you feel that the advertisers have pretty much of an absolute right to reach the public through radio and television ads, subject to the right of the networks and the broadcasters to establish some reasonable standards of good taste and discretion, as they have done.

Mr. **Fritts**. Yes, we do. We believe that very firmly, sir.

Mr. **Scheuer**. For a product that is not intrinsically harmful and that is lawful.

Mr. **Fritts**. That is correct.

Mr. **Scheuer**. I thought that was your position.

Mr. Chairman, I am going to take advantage of the closing words of Congressman Swift here before, just before he took the podium when he opened up the door to the subject of sex, OK? Let me talk to you about contraceptive advertising. You have just told us when it comes to wine and spirits it is the position of your industry that the advertiser should have an absolute right to advertise a subject that is legal, that is not harmful, subject to reasonable standards of taste and discretion and so forth, that they have put together very well, between the industry reps that we have heard from this morning and the networks themselves.

Why is there a blanket, flat, absolute ban on contraceptive advertising even though the product is not illegal, it is not harmful, and it is urgently needed in this country. Contraceptive advertising is fought for by churches—I can give you a whole ream of churches, by minority groups, by the Urban League, by the YMCA, by a whole raft of people who feel that the fact that over half of our pregnancies in this country are unwanted—by the fact that over half of black infant births are out of wedlock in this country—indicate that there is an urgent and desperate need for contraceptive information to be gotten out to our teenagers in ways that are in good taste, that are appropriate, and that won't offend people?

Why do you have this dichotomy?

Mr. FRITTS. Our trade association does not have a dichotomy. We do not have a position to recommend to stations since the Justice Department struck down our Code of Practices, and that issue was one which was before that code when it was struck down.

Individual stations have the responsibility for airing either product or public service commercials on issues of importance that they choose to air.

Mr. SCHEUER. All right. Let me interrupt you because my time is limited. Your NAB changed its position. Now they are not opposed to contraceptive advertising.

Mr. FRITTS. I did not say that. I said that it was under review by our Code of Good Practices when the Justice Department struck down the Code of Good Practices.

Mr. SCHEUER. I see.

Mr. FRITTS. We had to sign a consent decree agreeing not to be involved in any unilateral efforts along those lines. I would say I do personally know of a number of radio and television stations which are now accepting contraceptive advertising.

Mr. SCHEUER. That's quite true. There are some independent stations and there are some smallish cable networks that are accepting contraceptive advertising, but as far as the major networks are concerned, there is a flat taboo, and they are intercepting and they are prohibiting the manufacturers of the product, be it beer or wine or contraceptive material, a legal product, from having access to the media to reach their public.

Why is it that not a single television network has seen fit to end this rather medieval taboo when we have an urgent need in this country to ameliorate the explosion, the explosion of unwanted teenage pregnancies and unwanted teenage out-of-wedlock births.

Mr. FRITTS. As you know, Congressman Scheuer, each of the networks have their own individual standards and practices department. I can't speak to the reasons and the rationale that they have used. I am sure that you could discuss that directly with them for a more appropriate and correct answer.

Mr. SCHEUER. Well, you seem to speak very articulately and with great fluency, and very compellingly, I may say, for the broadcasters and for the beer and wine industry. Can't you speak with equal articulateness and thoughtfulness on this subject that I'm asking? I mean you are an expert on that industry.

Why are they hanging back? Why are they trying to go back to the 12th century, when they have got the most powerful engine of human education the mind of man has ever devised and when there is a desperate national need out there for contraceptive information on the part of our young kids? Why are they standing as a bulwark, closing off the access of television to contraceptive advertisers of a product that is legal and from advertising that is in perfectly good taste.

We have seen examples of it. Anybody that watches the MacNeil-Lehrer show saw some examples in the last few weeks of contraceptive advertising. I assure you they were in better taste than advertising for hemorrhoids and crotch itch and jock itch that I am exposed to every day and, frankly, that I find offensive. But I recognize that it is probably a good thing for other members of our vast public to know where they can get remedies for hemorrhoids, for jock itch, for crotch itch and the rest, so that's part of life. I don't have to like every ad that I see on television.

Why is this industry so squeamish? Why are they so pusilanimous and faint hearted about protecting us from contraceptive advertising when they are such courageous lions charging to the battle front in demanding that we expose our young kids to beer and wine ads?

Mr. **Fritts**. Again, Congressman, I would have to defer directly to the networks for their own individual standards and practices department. Each one, I am told, has different sets of standards, and as an industry spokesman, I can't speak to the various differences between those. I do know that a number of commercials every year, a substantial number or commercials which have been submitted to the various networks have been rejected. So I don't know that contraceptive is without some comfort of having friends in that same camp.

Mr. **Scheuer**. Did you, by any chance, see that MacNeil-Lehrer show that I'm talking about where they showed examples of contraceptive advertising?

Mr. **Fritts**. No, sir, I did not.

Mr. **Scheuer**. Would you take my word for it if I told you that you would be happy to have your——

Mr. **Fritts**. You are presenting a very compelling case, I must admit.

Mr. **Scheuer** [continuing]. That you would be happy to have your 12- or 13-year-old daughter see that. I mean it was in such elegant, exquisite good taste, it was mind boggling.

As I recall, a young man and a young woman, fully dressed, in sort of an ethereal setting, bouncing across a beautiful field, and they didn't even show the product. They showed nothing about the use of the product, and they simply said when you want to engage in intimate relations, do it at the right time and do it intelligently, and do it responsibly. That is pretty much what it was about.

Can anybody object to that?

Mr. **DeLuca**. Under the fairness doctrine, if we had the contraceptives, could we have wine as an aphrodisiac?

Mr. **Scheuer**. You as an expert ought to know that there is not an aphrodisiac on Earth, not oysters, not wine, and if you are making this claim on behalf of your industry, I am going to take you to the Federal Trade Commission tomorrow morning.

Mr. **DeLuca**. Remember that I am Sicilian.

Mr. **Wirth**. Thank you very much, Mr. Scheuer.

Mr. Nielson reminds me that Chairman Dingell would be very pleased to know of the further extension of the jurisdiction of the Energy and Commerce Committee.

Mr. Ritter.

Mr. **Ritter**. I am going to retreat from such noncontroversial issues as contraceptives and get back on something that is really controversial, beer and wine.

Do I detect that there are some differences in how far the respective wine and beer industries are prepared to go in terms of advertising codes? Mr. DeLuca first.

Mr. **DeLuca**. If I had had the time with my prepared statement to have concluded, I would have emphasized that we would be looking to this committee to assist us in getting the administration to go forward on rulemaking procedures so as to have a regulation that would adopt our code as mandatory for all vintners.

Mr. **Ritter**. Do you feel that your code is more rigorous than the voluntary approaches being taken by the beer industry?

Mr. **DeLuca**. As Mr. Shea said before, it isn't a question of vigor or rigor here, a fact of differences and distinctions. Our heritage is different, our backgrounds are different. What we have in common is that we all have alcohol in our products, but once you accept that and that it can be abused, therefore we are all involved in terms of the issue of abusive behavior.

Our whole difference in our approach led us, for example, on the issue of athletes to not use athletes in our code of advertising. Now this, I would submit, is not better, just a different approach. Our whole approach has been to go back to our European heritage, which is to emphasize wine and food and the family approach.

Mr. **Ritter**. I can see it now: a great big defensive lineman sipping on a glass of wine after a big game.

Mr. **DeLuca**. Well, they don't.

They don't in our advertising because even though it is a natural cultural development, people who win "Most Valuable" awards for football, baseball, basketball, people come to us and ask us for wine cellars to be put into their homes, do not appear on our advertising, and that was a conscious choice on our part. But I submit it is not a better approach, that we are not holding anybody in any invidious comparisons with us. It is our way of making our statement.

Mr. **Ritter**. Mr. Shea, do you have any comments on the kind of code that the winemakers have come up with as to how it might apply to your industry?

Mr. **Shea**. I am certain that under John's leadership, that the wine code is a commendable document for that industry, and I applaud them for it. In our instance, we revised our code beginning, I believe, in February of 1984 for a different product, which contains one essential similar ingredient, alcohol.

The one recognition that I think both of our industries have had is that, while we know that most of the people who use our products do so properly and in moderation, we also recognize they can be abused. But importantly—and again, John alluded to the use of athletes—I think it is important to note that in beer advertisements, most of the surveys which I have seen indicate that those retired athletes are recognized by middle-aged America, those who grew up with these athletes while they were active. It would be impossible for the youth to identify with some of the characters that you see on those commercials.

Mr. **Ritter**. Professor Banzhaf.

Mr. **Banzhaf**. Yes. I wonder, Mr. Ritter, whether an important point may be overlooked here in Mr. DeLuca's proposal. As I understand it, his group would like to have a code which he is then going to take to a governmental agency which that agency is then going to adopt and is going to become mandatory both on those people who are not now members of his group, those who in the future may change their mind, et cetera, and it seems to me that that would raise at least as many, if not more, first amendment objections with regard to those who are not voluntarily going along with it than the other two approaches.

At least the other two approaches are blanket approaches. What this one is saying is you can do this, you can do this, but you can't do this, you can't do this, and you can't do that. It would literally be dictating what can be in the ad and what could not, and I suspect that if Mr. Jacobson came to this committee and said, well, you should write a law that says the beer people can do this but they can't do this, this, and this, there would be horrendous howls of first amendment objection. I wonder why these two approaches have so many first amendment objections and his approach of asking the Government, in effect, to mandate what a large group wants does not have those objections.

Mr. **Ritter**. A brief answer, please, Mr. DeLuca.

Mr. **Lynn**. Can I respond? I think clearly the ACLU would have major problems if any specific industry code were attempted to be incorporated in Federal regulations so as to proscribe the type of ads that you could show for any product. We know that industry codes do, in fact, impinge on free expression values frequently, and this would just be another unfortunate case of that happening.

Mr. **DeLuca**. Under the comment procedure, of course—under our proposal, everyone would be invited to participate, and in terms of the Federal Trade Commission, which is why we came to the ATF in the first place, we had asked for parallel guidelines, we had asked for voluntary opportunities on the part of others to adopt our code.

The FTC enjoined us from doing so, so the only recourse we have—and there are many regulations in the industry that apply across the country and including foreign wines—is through the rulemaking procedure. So it would be the rulemaking procedure that would have to be the focus of attention.

Even though we have petitioned that our code be the code that be adopted, I'm sure ATF would accept codes or accept comments from all sources, and I think that would get around any of the objections any of these members have now.

Mr. **Ritter**. I would like to comment on another point. We have heard a lot about glamorizing products, and of course, it seems that what TV advertising is all about is glamorizing everything, although hemorrhoid medicines might be a good exclusion to that. We glamorize speed in our cars, we glamorize acceleration, we pitch the advertisements—many of the advertisements, not all—toward a young audience.

Fifty thousand people are dying every year from the abuse, to some extent, the abuse of the automobile. How do you make the disconnection between deglamorizing beer and wine and the fact that we glamorize speed and we glamorize acceleration and we sell excitement in our cars.

Mr. **Jacobson**. I question ads for automobiles that show trucks roaring across canyons and doing flips and automobiles racing at 100 miles an hour, apparently. I do not think those ads are appropriate, either. I think you especially——

Mr. **Ritter**. That is your next step, then.

Mr. **Jacobson** [continuing]. We have complained. Our organization has filed complaints with the Federal Trade Commission, Better Business Bureau, and the television networks, the New York State attorney general, about many ads in the past year, and we have seen action on every single ad regarding deceptive vegetable ads, deceptive ads. Some of those are being taken care of, interestingly, not by the Federal Government but by State governments and private agencies.

One of your concerns is that you appreciate the difference between the wide range of risks to which Americans are exposed, and you have emphasized that we should not put any great effort on the chemicals that may cause 1 death in 1 million people or in 10 million people or in 100 million people.

Cigarettes and alcohol are at the other end of this extreme. Roughly 10 percent of people who drink will become alcoholic. That has been the common experience in our Nation. Cigarettes kill. The Cancer Society said smoking contributed to 350,000 deaths a year. The National Institute on Alcohol Abuse and Alcoholism said that alcohol contributes to between 100,000 and 200,000 deaths a year.

That is very different from every other consumer product.

Mr. **Ritter**. I sympathize with trying to do something about the problem of alcohol abuse and its cost in human terms and its cost in material terms to this country. Someone mentioned $120 billion in costs in addition to 100,000 foreshortened lives, but I think we have to differentiate clearly at some point between cigarettes and alcohol, in that cigarettes, no matter how small amounts of the smoke is taken into the system, it is dangerous, harmful, it is essentially, to some extent, poisonous.

What we have learned through various medical studies and health effects studies, epidemiological studies is that small amounts of alcohol—and I address this also to Professor Banzhaf—that small amounts of alcohol are actually salutary in preventing arteriosclerosis and heart disease.

We are looking at one to two drinks per day, which can actually deter arteriosclerosis and heart disease. This should be good news to a lot of you out there, especially in this town.

There is this qualitative difference between alcohol consumption and cigarette use as compared to alcohol abuse and cigarette abuse. I might add it is not only abusive to the individual party, but it is highly abusive to those who are exposed to cigarette smoke, and I might add that one cigarette lit in this room violates everything we have legislated in terms of particulates and other volatiles in terms of the Clean Air Act.

So there are some major and substantive differences between the two, and I think we have to clarify them.

Mr. JACOBSON. Can I address that before Professor Banzhaf gets to it? First of all, there are tens of millions of people who should not drink at all in this country because they are under age, because they have had a drinking problem in the past, they are pregnant or some other problem. So that is important to realize.

The second thing is that alcohol has an acute effect that tobacco does not. It takes cigarettes decades to kill people, whereas alcohol could kill the drinker or innocent people in a matter of minutes through toxicity, a motor boating accident, a fall, spouse abuse. There are differences. But alcohol has that short-term, mind altering effect that cigarettes don't have.

Mr. RITTER. But it is the differential between use and abuse that is rather blurred in terms of cigarette smoking. In other words, use of alcohol, as we have stated and as the medical health effects data are showing, in small quantities periodically is actually beneficial to health. This is aside from potential relaxant effects.

All I am saying is that you cannot lump alcohol in the same bailiwick that you lump cigarettes.

Professor Banzhaf.

Mr. BANZHAF. I certainly agree the two products are different in many ways. This is what I said in my statement. Not only are cigarettes far more dangerous in terms of total lives taken, as you point out, virtually all cigarette use is abuse. There is no safe lower level, whereas with alcohol, there is.

Another important difference that has not been mentioned is that with regard to cigarettes, the big problem was that up until 1964, we really did not know they were dangerous, so we had a Surgeon General's report that established that it was important to get out the information, whereas many, not all, but many of the problems related to alcohol and alcohol abuse have been known for a long time. So there are differences.

On the other hand, there are a great many similarities, which I pointed out, and I think to a certain extent, Congress reasons by analogy, never a perfect analogy.

Mr. RITTER. But in your testimony you basically made the case for advertising control, although you said you simply were presenting data. You essentially made the case for advertising control of the alcohol product, which we have established has this substantive qualitative difference between itself and the cigarettes.

I think that this is one of the hurdles that we on this committee would face in the event of legislation.

Mr. BANZHAF. I did not argue for it. I tried not to make the case one way or another but tried to approach both of the bills and to see what knowledge we might gather from the use of cigarettes. With regard to the use and abuse, and I think there is an important difference, but I think also that if what Mike is saying is correct, if you increase overall consumption by a certain extent, it will follow that there will be a certain increase of abuse, so the two are inexorably linked.

What I tried to point out in my testimony is, as between the two approaches, the reply time approach and the ban approach, the reply time approach will probably have more of an effect—and whether this is good or bad or desirable is for you—it will have more of an effect, and the effect will be far more immediate, will be felt immediately rather than 10 years down the road if cigarettes give us any guidance.

From the point of view of my understanding of the first amendment and the legal issues, it seemed to me that the ban, although both would, I think, pass constitutional muster, I think that the ban raises more serious first amendment problems—and I think here I am much closer to Mr. Lynn of the ACLU. He said it would be unconstitutional. I think it would be constitutional, but it would raise far less problems to deal with than a reply doctrine.

The fact, by the way, that the reply time or the fairness doctrine has previously been the domain of the FCC does not by any means take it out of the hands of the Congress. The Congress at this point has a problem. It can assess the magnitude of the problem. There are a variety of approaches which have been used with a number of other products. You can ban the product, as you do with various drugs. Many of these drugs, by the way, produce far less social toll than either cigarettes or alcohol.

Mr. RITTER. If I could interject for a second, taking this other argument to its conclusion, there are some positive effects of low-level alcohol consumption. It is conceivable that you could deter those positive health effects on heart disease, on arteriosclerosis and, potentially, stress, which we are finding out more and more is a potential killer as well.

In other words, again, the lines are not so clear between the fact of counter advertising and increased health and well-being of the population.

Mr. BANZHAF. We are on the same wavelength. One thing that might occur under the reply time approach is a responsible alcohol organization might say that if you drink only so much per day, it will probably have the following beneficial effects, one glass of wine a day, or whatever, that it may reduce your heart attack, may do this, may do that; however, if you go over a certain amount, then you are going to lose these benefits and, indeed, you are going to get this, this and this in addition.

If you are an alcoholic, then even though drinking one glass a day will help the average person, it will not help you. I think that would be a perfectly responsible kind of ad that would appear under reply time doctrine, which I think is another reason to prefer that over the ban if Congress decides that the problem is serious enough to do something about it.

Mr. Fritts. I would like to distinguish, Congressman, between use and abuse in a rather graphic way. A person who drinks 2 beers a day 5 days a week consumes 10 beers at the end of the week. A person who waits until Friday night and consumes 10 beers abuses the product. Therefore, I think it is difficult to draw a relationship between consumption and misuse. Point No. 1.

No. 2, it seems that there are a number of radio stations and a number of television stations across this country who operate in what are known as dry counties. They do not sell beer or wine or hard spirits. Under the fairness doctrine, those stations would not be required to air messages or problems associated with alcohol. Yet, today they participate voluntarily in our aggressive campaign to eliminate drunk drivers from the road and to address the issues of alcoholism in the home and abuse and everything else we have planned for phase two of our campaign.

Mr. Ritter. Mr. Chairman, I have no further questions.

Thank you.

Mr. Wirth. Mr. Ritter, thank you very much, and to all members of the panel, we thank you for being with us.

It seems to me, in summary, that we could make this as complicated as possible or it seems to me we can also move toward a certain amount of simplification. I think there is another view which is more simple that has not been addressed overall, and that relates to our responsibility in the Congress and the executive branch.

It seems to me we have a responsibility to pursue the goal of the public health, and if, in fact, what has been suggested is true—that cigarettes are the No. 1 killer, 500,000 people a year—we have taken them off the air but we ought to be doing significantly more than that. Probably we should stop subsidizing tobacco farmers and we should not lower the tax on tobacco. That is a good common sense sort of thing.

Mr. Ritter. Mr. Chairman, if you will yield for a moment on that, would you be willing to ban cigarette smoking from your hearing room?

Mr. Wirth. Absolutely. I don't know what the rules on that are, but it seems to me, leaving that aside, we look at alcohol and what we are trying to do is figure out how to encourage moderation. Mr. DeLuca and the Wine Institute appear to have an approach that makes some sense. Mr. Fritts is after an approach that has apparently had some impact.

There probably are other things that we ought to be doing in that area. Mr. Jacobson has recommended one. We have a public health concern that is very different from tobacco. We have automobile accidents that are the third biggest killer in the country, apparently. Heart disease and smoking go hand in hand, I think, and maybe, Mr. Fritts, what we might do is to get everybody to think about automobiles, if they are a big killer, what can we do about getting automobile companies to put air bags in automobiles. You know it is going to save a lot of lives pretty rapidly, and it would be a rational thing to do if we are looking at the public health.

Anyway, it seems to me that there is a consensus on this public health concern. In the United States Congress and as a government, the public welfare is our overall concern. It is not to assure certain revenue flow to broadcasters, not to assure that more regular beer or light beer gets sold. That is not our concern. Our concern is a broad set of issues of public health, and I think that should also be part and parcel of our thinking on this issue.

Mr. Fritts.

Mr. Fritts. One last word. We in the broadcasting industry would like very much to continue working with you and the Congress, not only on beer and wine but also on other health issues of concern.

Mr. Wirth. I appreciate that, and I think that those are concerns that we all ought to have.

I especially want to thank—shall we call them our outside witnesses, this morning, Dr. Johnston for coming from Ann Arbor; Mr. Banzhaf, particularly, I think you got beaten up a little bit today for a lot of—probably the wrong reasons, but you are a good lawyer and professor of law, and I suppose that comes with that profession, doesn't it?

Mr. Banzhaf. I'm used to it, Mr. Chairman.

Mr. Wirth. We thank you all very much for being here, and Mr. Lynn, as well. We appreciate your help. Thank you ever so much.

If the hearing room could be in order, please.

Our second panel this morning includes Mr. Herman Land, the president of the Association of Independent Television Stations, Mr. Howard Bell, the president of the American Advertising Federation, Ms. Ann Kahn, first vice president of the National PTA here in Washington, Mr. William Drake, Associate Director for Compliance Operations in the Bureau of Alcohol, Tobacco and Firearms, Mr. Bernard Mann, president of the National Radio Broadcasters Association in Washington, Dr. Charles Atkin, professor of communications at Michigan State University in East Lansing, and Dr. Donald Strickland, assistant professor, Washington University, in St. Louis.

If we might have our witnesses perhaps in that order, our first witness of the second panel is Mr. Herman Land, retiring as the distinguished president of the Association of Independent Television Stations.

Mr. Land, we are delighted to have you here and we will certainly miss you in that capacity.

I am delighted to be able to note that Mr. Land has been designated as the first professor to sit in the Lionel Van Deerlin Chair of Communications at San Diego State University. As its first occupant, Mr. Land will teach in the areas of telecommunications and public policy, an area that he knows so well.

He is the author of a book entitled "Drugs and Your Child" and brings with him very broad expertise in that area, and Mr. Land, we have more in common than most know. We now both occupy chairs endowed by Congressman Van Deerlin

Mr. Land, thank you very much for being here.

I think all of you are familar with the rules of the subcommittee, and we will include your statements in full in the record. I would ask you to summarize those statements in 5 minutes or less, and then we will get back into questions and answers.

Thank you all very much.

Mr. Land.

STATEMENTS OF HERMAN LAND, PRESIDENT, ASSOCIATION OF INDEPENDENT TELEVISION STATIONS; HOWARD H. BELL, PRESIDENT, AMERICAN ADVERTISING FEDERATION, ALSO ON BEHALF OF AMERICAN ASSOCIATION OF ADVERTISING AGENCIES AND ASSOCIATION OF NATIONAL ADVERTISERS, INC.; ANN P. KAHN, FIRST VICE PRESIDENT, NATIONAL CONGRESS OF PARENTS AND TEACHERS; WILLIAM T. DRAKE, DEPUTY DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF TREASURY; BERNARD MANN, PRESIDENT, NATIONAL RADIO BROADCASTERS ASSOCIATION; CHARLES K. ATKIN, PROFESSOR, DEPARTMENTS OF COMMUNICATION AND TELECOMMUNICATIONS, MICHIGAN STATE UNIVERSITY; AND DONALD E. STRICKLAND, ASSISTANT DIRECTOR OF SOCIAL SCIENCE INSTITUTE, WASHINGTON UNIVERSITY (ST. LOUIS)

Mr. LAND. Thank you for that very gracious introduction, Mr. Chairman.

In trying to think like a professor, which is a little difficult at this moment, I searched the record and found the following line from an observer living in the fourth century who was pretty good at these things, called Plato. In his later document, "Laws." "Boys should abstain from all use of wine until their 18th year, for it is wrong to add fire to fire." I think Mr. Swift was talking about that point.

But I am still representing Independent Television, Mr. Chairman, and I would like to lay it right out on the table up front that there are problems if you do anything drastic like passing a ban or counter commercials.

There are approximately 214-plus stations of this type on the air, and between 1979 and 1984, some 130 came on the air. The bulk of them, it is fair to say, are still losing money or are marginal operators, at best. Mandating so-called counter commercials will, in my opinion, have the same effect as a ban. It will drive out beer advertising, and that is a mainstay, an advertising category that supports the sports programming. The average is about 20, 25 percent of sports revenues, according to our members, in some cases even as high as 50 percent.

The practical consequence: less sports for the viewer, more loss of sports in the direction of pay TV, to the detriment of the free TV viewer.

However, now that that is taken care of, the well-being of the public obviously comes first here, as it must, so let me go on to a few observations borne of over 30 years in and around the broadcast industry and with some interest in this general question. These are elementary observations.

Underlying the attacks on beer and wine advertising, it seems to me, are several presumptions: one, that TV is an all-powerful medium with which to engineer social change; two, that a so-called counter-commercial effort will achieve the objective of lowering alcohol consumption; three, that the industry of television cannot be trusted to do the job on its own; and four, that TV is a linchpin and that other media need not be involved.

And as the chairman stated so ably, the nub of the matter being discussed here is: should we rely on the voluntary efforts of the concerned industries or should we mandate those efforts in the specific form of the counter commercial?

It seems for me that in order for television to play its role as a positive social force, a number of conditions are called for, one being a social consensus as to the goal sought. There is no problem in this instance, of course, since no one is for drunk driving or alcohol abuse.

Two, a movement within the medium that is in harmony with the consensus. There are several important components in this case. One, the PSA's, which you have seen and heard so much of, which are often brilliantly creative. Two, informational programs and reports by the networks, whom I am accustomed to fighting—and I am delighted to take time off from that at this moment—and stations.

Three, constructive efforts on the part of the beer and wine industries to effect commercial treatment in the light of agreed—on social goals. Fourth, changes now taking place in the social values exhibited in entertainment programming.

There is a serious movement within the creative community, particularly in Hollywood, focusing on the value content of our popular programs directed to the deglamorization of alcohol. In the long run, this can be one of the most significant of the self-correcting measures.

What we are seeing, then, is an all-embracing creative television effort by the affected industries—wine, beer, the networks and stations, and the programmers—directed toward a common social objective. Will it work? No guarantee because it only represents a media effort and only one medium, however important.

I think we would all agree, nevertheless, that the effort is assuredly worthwhile. One caution. If you drive this advertising out of television, it will, without question, wind up in magazines, newspapers, billboards and the like, and in heavy concentration.

The committee staff's excellent report on background briefly reported the Canadian experience in banning alcohol advertising, noting inconclusive results in terms of lowering consumption. The researchers point to continuing advertising in other media as one of the factors probably involved. The advertising of the cigarette industry is instructive in this regard.

It is important, too, that a media campaign go hand in hand with the work of governmental and voluntary social agencies in direct touch with the individuals we are trying to help.

To apply a fairness doctrine treatment here is the same as trying to climb a mountain of mud. You fall deeper as you climb.

Think, for example, of a wine commercial that touches only on aroma and taste, one of those brands that wins the taste test. It is stretching, it seems to me, to charge that such a commercial triggers a controversial issue.

Until now, the issue has been abuse and how to deal with it. The new discussion appears to be centering on use itself. If even moderate drinking of these products is said to be dangerous, then I submit we are beginning a brand new debate.

Now, in the meantime, you have been given an actual commitment by the television industry. Mr. Fritts stated earlier that this effort will continue. I can tell you that at a board meeting a couple of weeks ago, our own independent board members talked about doing special PSA's, and other efforts, for children directly, to be aired in children's time, which in our case is largely Monday through Friday.

So, to this observer it is no contest. The creative voluntary efforts of the advertising programming and media participants are worth nourishing. The nature and record of the broadcast industry indicate that it will continue to grapple with the problem so long as it continues to trouble us.

We have a good thing going. My recommendation is that we keep it going. Thank you.

Mr. Luken [presiding]. Thank you very much, Mr. Land, for your testimony.

We will now have the joint testimony of the American Advertising Federation, the American Association of Advertising Agencies, and the Association of National Advertisers, Inc.

We will start with Mr. Howard H. Bell, who is president of American Advertising Federation.

You are here on behalf of whom?

STATEMENT OF HOWARD H. BELL

Mr. Bell. Thank you very much.

I am testifying on behalf of the AAF as well as the American Association of Advertising Agencies and the Association of National Advertisers.

Mr. Luken. And we have your written testimony, which, without objection, will be received, and you may proceed in any way you think will be helpful.

Mr. Bell. Thank you very much.

Our three advertising associations together include every segment of advertising. In addition, the Free Marketing Coalition, with a membership that includes the Station Representatives Association and the American Newspaper Publishers Association, among others, endorses this testimony.

All three advertising associations share a deep concern about alcohol abuse, and long before the spotlight of national concern, the advertising community donated its time and talents to public service campaigns to help combat alcohol abuse and drunk driving. All three associations are members of the board of the Advertising Council, through which corporations and agencies contribute to develop campaigns and the media contribute time and space.

Our three associations, however, oppose proposals to ban wine and beer advertising on the broadcast media or require counter advertising, for four principal reasons. First, such restrictions will not help solve the problems of alcoholism and drunk driving. Second, such restrictions would be unconstitutional. Third, such restrictions would injure competition, discriminate against radio and TV broadcasters, limit the ability to introduce new products, and create broad and dangerous precedents, as virtually any product can be misused.

Four, such restrictions on wine and beer advertising on broadcast media would be counter-productive. They are cosmetic approaches to a real problem. They would divert and dissipate society's search for true and meaningful solutions. There is massive evidence that a ban on wine and beer ads would fail to help the alcohol abuse and drunk driving problem, based on the countries where it has been tried and failed and the preponderance of research data.

We are equally opposed to mandated counter advertising, which would create dangerous precedents and present a major divergence from present FCC policy. This divergence would have to be predicated on the misuse of alcohol products, and virtually any product can be so misused.

As a result, mandating counter advertising would cripple advertising itself. The Federal Trade Commission and the Bureau of Alcohol, Tobacco and Firearms already have full power to ban any false or deceptive alcohol beverage ad, and therefore, counter advertising would be targetted to truthful, nondeceptive advertising.

Further, alcohol beverage advertising has not been found to cause alcohol abuse. In fact, the Federal Trade Commission recently found, after reviewing all the data, "No reliable basis on which to conclude that alcohol advertising significantly affects alcohol abuse." And your own Office of Technology Assessment, which was referred to earlier, here in the Congress made no mention of advertising in looking at and studying all the causes of alcohol abuse.

Senator Hawkins, after her full hearings on the Senate side, concluded that there was no evidence of that abuse through advertising presented.

So, what you are looking at is counter advertising directed at ads, then, that have not been found to cause harm, and in our view, counteradvertising would result or be tantamount to a beer and wine advertising ban, for why should the advertisers utilize broadcast and cable if such use is going to automatically release a barrage of mandated counter ads against their products, and at a very high cost.

If wine and beer ads continue to use broadcast and cable, counter advertising inevitably will drive public service announcements for the many other worthy causes off the air, causes for which advertisers and broadcasters annually contribute hundreds of millions of dollars.

Therefore, we urge Congress to reject H.R. 2526. The FCC, since its 1974 fairness policy statement, regardless of which party which was in power, has held that product ads do not trigger the Fairness Doctrine, and the Congress should not deviate from this view or an endless array of products may have to be considered controversial.

Now, despite the lack of credible evidence that wine and beer ads cause alcohol abuse, critics ignore this fact. Michael Jacobson stated in the Wall Street Journal that "Every ad for alcohol is an ad for drinking. We are concerned with the most innocuous ads, and we won't stop until something permanent is obtained."

We think the Congress must turn its back on this neoprohibitionist view. The mere use of alcohol is not controversial, and public service announcements are not analogous or synonymous with counter advertising. There is a vast distinction. Public service announcements are voluntary. They are donated by broadcasters based on community concerns rather than contingent on responding to truthful product advertising.

We urge that this issue be dealt with not on a subjective emotional or kneejerk basis. We hope that it will be examined on a factual, objective basis without blurring the use of alcohol, the legitimate use of alcohol and alcohol abuse. We can make progress, we believe, in combatting alcohol abuse and drunk driving, but we can do so without impinging upon advertising freedom.

In closing, I would like to show just a couple of examples of how advertising is trying to help in that regard, with your permission, a couple of spots.

[Video presentation.]

Thank you very much.

[Mr. Bell's prepared statement follows:]

JOINT TESTIMONY OF

THE AMERICAN ADVERTISING FEDERATION
THE AMERICAN ASSOCIATION OF ADVERTISING AGENCIES AND
THE ASSOCIATION OF NATIONAL ADVERTISERS, INC.

GOOD MORNING. I AM HOWARD BELL, PRESIDENT OF THE AMERICAN ADVERTISING FEDERATION. I WOULD LIKE TO THANK CONGRESSMAN WIRTH AND THE OTHER MEMBERS OF THE TELECOMMUNICATIONS SUBCOMMITTEE FOR PROVIDING THIS OPPORTUNITY TO TESTIFY TODAY.

DUE TO THE TIME CONSTRAINTS OF THIS HEARING, I HAVE BEEN DESIGNATED TO PRESENT THE JOINT TESTIMONY OF MY OWN ASSOCIATION, AS WELL AS THAT OF THE AMERICAN ASSOCIATION OF ADVERTISING AGENCIES AND THE ASSOCIATION OF NATIONAL ADVERTISERS, INC..

OUR THREE ASSOCIATIONS TOGETHER INCLUDE EVERY SEGMENT OF THE ADVERTISING COMMUNITY: ADVERTISING AGENCIES, CORPORATE ADVERTISERS, BROADCASTERS, THE PRINT MEDIA, OUTDOOR ADVERTISERS, AND ADVERTISING CLUBS.

ALL THREE OF OUR ASSOCIATIONS SHARE A DEEP CONCERN ABOUT THE SERIOUS PROBLEMS OF ALCOHOL ABUSE IN THE UNITED STATES. LONG BEFORE THESE ISSUES RECEIVED THE SPOTLIGHT OF NATIONAL PUBLIC CONCERN, THE ADVERTISING COMMUNITY DONATED ITS TIME AND TALENTS TO PUBLIC SERVICE CAMPAIGNS TO HELP COMBAT ALCOHOL ABUSE AND DRUNK DRIVING. ALL THREE OF OUR ASSOCIATIONS ARE MEMBERS OF THE BOARD OF THE ADVERTISING COUNCIL, THROUGH WHICH MAJOR CORPORATIONS AND ADVERTISING AGENCIES DEVELOP PUBLIC SERVICE CAMPAIGNS AND THE MEDIA CONTRIBUTE THE TIME AND SPACE TO RUN THEM. THROUGH SUCH PROGRAMS, WE ARE COMMITTED TO A NATIONAL COOPERATIVE EFFORT TO COMBAT ALCOHOL ABUSE AND DRUNK DRIVING.

OUR THREE ASSOCIATIONS, HOWEVER, ADAMANTLY OPPOSE PROPOSALS TO BAN WINE AND BEER ADVERTISING ON THE BROADCAST MEDIA FOR FOUR PRINCIPAL REASONS.

FIRST, SUCH A BAN WILL NOT HELP TO SOLVE THE PROBLEMS OF ALCOHOLISM AND DRUNK DRIVING;

SECOND, SUCH A BAN WOULD BE UNCONSTITUTIONAL;

THIRD, SUCH A BAN WOULD INJURE COMPETITION, DISCRIMINATE AGAINST RADIO AND TV BROADCASTERS, LIMIT THE ABILITY TO INTRODUCE NEW PRODUCTS INTO THE MARKETPLACE, AND CREATE BROAD AND DANGEROUS PRECEDENTS, AS VIRTUALLY ANY PRODUCT CAN BE MISUSED;

FOURTH, A BAN OF WINE AND BEER ADVERTISING ON THE BROADCAST MEDIA WOULD BE COUNTER-PRODUCTIVE. IT IS A COSMETIC SOLUTION TO A REAL PROBLEM. LIKE PLACING A BAND-AID ON A CANCER, IT TENDS TO DIVERT AND DISSIPATE SOCIETY'S SEARCH FOR TRUE AND MEANINGFUL SOLUTIONS TO THESE TRAGIC PROBLEMS.

THERE IS MASSIVE EVIDENCE THAT A BAN ON WINE AND BEER ADS WOULD FAIL TO SOLVE THE ALCOHOL ABUSE AND DRUNK DRIVING PROBLEMS IN OUR SOCIETY.

THE SOVIET UNION AND OTHER EASTERN BLOC COUNTRIES, FOR EXAMPLE, HAVE IMPOSED A TOTAL BAN ON ALCOHOL BEVERAGE ADVERTISING IN THEIR COUNTRIES. YET THEY HAVE SOME OF THE WORST ALCOHOLISM PROBLEMS IN THE WORLD. THE ADVERTISING OF WHISKEY WAS BANNED IN FRANCE FROM 1957 TO 1979, YET WHISKEY CONSUMPTION INCREASED FROM 157,000 PROOF GALLONS TO MORE THAN 6 MILLION PROOF GALLONS DURING THAT PERIOD.

BRITISH COLUMBIA BANNED ALCOHOL BEVERAGE ADS, BUT A CAREFUL STUDY OF THE BAN FOUND THAT "YEARLY AND MONTHLY ANALYSIS OF BEER, WINE AND LIQUOR SHOWED NO SUBSTANTIAL EFFECT OF THE BAN." THIS BAN, LIKE THE ONE IN FRANCE, HAS BEEN DROPPED. WHY SHOULD WE RUN AN EXPERIMENT ON THE EFFECTS OF A BAN IN OUR

COUNTRY WHEN THIS TEST HAS BEEN TRIED IN NUMEROUS OTHER COUNTRIES AND FAILED?

FURTHER, THE OVERWHELMING PREPONDERANCE OF SCIENTIFIC STUDIES HAVE NOT FOUND ADVERTISING TO BE A MAJOR, OR EVEN A SIGNIFICANT FACTOR IN THE CAUSES OF ALCOHOL ABUSE.

FOR ALL THESE REASONS, WE STRONGLY BELIEVE THAT ANY BAN ON TRUTHFUL WINE AND BEER ADVERTISING IN THE MEDIA WOULD BE UNCONSTITUTIONAL. THE SUPREME COURT HAS RULED THAT TRUTHFUL ADVERTISING CAN ONLY BE RESTRICTED UNDER VERY LIMITED CIRCUMSTANCES, AND THAT SUCH A RESTRICTION IS UNCONSTITUTIONAL "UNLESS IT DIRECTLY ADVANCES THE GOVERNMENTAL INTERESTS ASSERTED" AND "IS NOT MORE EXTENSIVE THAN NECESSARY." CENTRAL HUDSON GAS AND ELECTRIC CORP. V. PUBLIC SERVICE COMMISSION OF NEW YORK, 447 US 557 (1980)

BANNING THE BROADCAST ADVERTISING OF BEER AND WINE FAILS BOTH TESTS. IT WON'T CURE ALCOHOLISM, OR DETER DRUNK DRIVERS, AND IN ALL PROBABILITY, WILL NOT EVEN AFFECT CONSUMPTION. A BAN IS OVERLY BROAD IN THAT IT DOES NOT DIRECTLY ATTACK THE PROBLEMS OF ALCOHOL ABUSE.

THERE ARE A VARIETY OF ALTERNATE MEASURES THAT ARE AVAILABLE AGAINST DRUNK DRIVING AND ALCOHOLISM THAT ARE LESS RESTRICTIVE --INDEED NOT AT ALL RESTRICTIVE --OF COMMERCIAL SPEECH AND ARE LIKELY TO BE FAR MORE EFFECTIVE IN RESOLVING THESE SERIOUS PROBLEMS. RAISING THE DRINKING AGE, IMPOSING HARSHER PENALTIES FOR SELLING OR IMBIBING IN VIOLATION OF SUCH AGE LIMITATIONS, HEAVILY PENALIZING DRUNK DRIVING, INCREASING ALCOHOLISM TREATMENT PROGRAMS, AND INCREASING ALCOHOL ABUSE INFORMATION PROGRAMS IN OUR SCHOOLS ARE JUST A FEW EXAMPLES. NONE OF THESE APPROACHES WOULD VIOLATE THE FIRST AMENDMENT. A BAN ON WINE AND BEER ADVERTISING ON THE BROADCAST MEDIA WOULD.

THE A.A.F., A.A.A.A'S AND A.N.A. ARE EQUALLY OPPOSED TO MANDATED COUNTER-ADVERTISING. COUNTER-ADVERTISING IS NOT A COMPROMISE OR A REASONABLE ALTERNATIVE TO A BAN ON BEER AND WINE ADVERTISING. COUNTER-ADVERTISING WOULD CREATE EXTREMELY DANGEROUS NEW PRECEDENTS AND REPRESENTS A MAJOR DIVERGENCE FROM PRESENT FEDERAL COMMUNICATIONS COMMISSION POLICY. THIS DIVERGENCE WOULD HAVE TO BE PREDICATED ON THE MISUSE OF ALCOHOL PRODUCTS. BUT, CLEARLY, VIRTUALLY ANY PRODUCT CAN BE MISUSED. WILL WE HAVE TO HAVE COUNTER-ADVERTISING FOR THE MYRIAD OTHER PRODUCTS THAT CAN BE MISUSED? THE ANSWER TO THIS QUESTION MUST BE NO; OTHERWISE, MANDATED COUNTER-ADVERTISING WILL DIRECT A SEVERE BODY BLOW AT ADVERTISING AND COMMERCIAL BROADCASTING IN THIS COUNTRY.

LET'S EXAMINE THE IMPACT OF COUNTER-ADVERTISING PROPOSALS. FIRST, THE FEDERAL TRADE COMMISSION AND THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS ALREADY HAVE FULL POWER TO BAN ANY FALSE OR DECEPTIVE ALCOHOL BEVERAGE AD. THEREFORE, INEVITABLY, COUNTER-ADVERTISING PROPOSALS WILL BE TARGETED AT TRUTHFUL, NON-DECEPTIVE ADVERTISING.

SECOND, ALCOHOL BEVERAGE ADVERTISING HAS NOT BEEN FOUND TO CAUSE ALCOHOL ABUSE IN THE UNITED STATES. IN FACT, THE FEDERAL TRADE COMMISSION RECENTLY UNEQUIVOCALLY STATED THAT IT FOUND "NO RELIABLE BASIS ON WHICH TO CONCLUDE THAT ALCOHOL ADVERTISING SIGNIFICANTLY AFFECTS ALCOHOL ABUSE." THEREFORE, COUNTER-ADVERTISING PROPOSALS WOULD BE DIRECTED AT ADS THAT HAVE NOT BEEN FOUND TO CAUSE HARM.

IN OUR VIEW, THESE COUNTER-ADVERTISING PROPOSALS ARE TANTAMOUNT TO A WINE AND BEER ADVERTISING BAN ON THE BROADCAST MEDIA AND CABLE. WHY SHOULD THESE

ADVERTISERS UTILIZE THE BROADCAST MEDIA AND CABLE IF SUCH USE WILL AUTOMATICALLY UNLEASH A BARRAGE OF MANDATED COUNTER-ADS AGAINST THEIR PRODUCTS? SUCH AN APPROACH IS LIKELY TO DRIVE ADVERTISERS TO UTILIZE MEDIA IN WHICH COUNTER-ADVERTISING IS NOT REQUIRED.

IF ON THE OTHER HAND, COUNTER-ADVERTISING IS MANDATED, AND DESPITE THIS FACT, WINE AND BEER ADVERTISERS CONTINUE TO UTILIZE THE BROADCAST MEDIA AND CABLE, THESE MASSIVE COUNTER-ADVERTISING MESSAGES INEVITABLY WILL DRIVE PUBLIC SERVICE ANNOUNCEMENTS FOR MANY OTHER CAUSES OFF THE AIR. BROADCASTERS AND CABLE OPERATORS WILL BE REQUIRED TO FIND TIME FOR THESE COUNTER-ADS. SOMETHING WILL HAVE TO BE ELIMINATED. WILL THE PUBLIC SERVICE ANNOUNCEMENTS FOR DRUG ABUSE HAVE TO GO? OR FOR SMOKEY THE BEAR AND MCGRUFF THE CRIME DOG? OR PUBLIC SERVICE ANNOUNCEMENTS FOR THE NEGRO COLLEGE FUND OR ETHIOPIAN RELIEF? OR FOR THE NUMEROUS OTHER ISSUES FOR WHICH ADVERTISERS AND BROADCASTERS ANNUALLY CONTRIBUTE HUNDREDS OF MILLION OF DOLLARS IN DONATED TIME?

WE BELIEVE THAT A COUNTER-ADVERTISING PROPOSAL DIRECTED AT TRUTHFUL, NON-DECEPTIVE, NON-HARMFUL ADS IS EXACTLY THE TYPE OF MISGUIDED REGULATION THIS COUNTRY DOES NOT NEED.

THEREFORE, WE CALL ON THE CONGRESS TO REJECT THE COUNTER-ADVERTISING BILL PROPOSED BY CONGRESSMAN SEIBERLING.

THE FEDERAL COMMUNICATIONS COMMISSION, SINCE ITS 1974 FAIRNESS POLICY STATEMENT, (48 FCC 2d 1), NO MATTER WHICH PARTY WAS IN POWER, HAS HELD THAT PRODUCT ADS DO NOT TRIGGER THE FAIRNESS DOCTRINE. IN OTHER WORDS, COMMERCIALS

THAT MERELY DESCRIBE THE PROPERTIES OF A PRODUCT IN A POSITIVE LIGHT ARE NOT THEREBY CONTROVERSIAL SO AS TO TRIGGER THE FAIRNESS DOCTRINE.

THE CONGRESS SHOULD NOT DEVIATE FROM THIS VIEW OR AN ENDLESS ARRAY OF PRODUCT ADS MAY HAVE TO BE CONSIDERED CONTROVERSIAL. IN PARTICULAR, WE MUST DRAW A SHARP DISTINCTION BETWEEN ADS DIRECTED AT AIDING THE PUBLIC IN THEIR CHOICE OF WHICH BRAND TO UTILIZE WHEN THEY LEGALLY CONSUME WINE AND BEER -- AND THE ABUSE OF ALCOHOL BY SOME IN OUR SOCIETY.

THERE IS NO CREDIBLE EVIDENCE THAT WINE AND BEER ADS CAUSE ALCOHOL ABUSE IN THE UNITED STATES. MICHAEL JACOBSON AND OTHER CRITICS FAIL TO MAKE THIS DISTINCTION. MR. JACOBSON HAS STATED IN THE WALL STREET JOURNAL THAT HE IS OPPOSED TO ALCOHOL BEVERAGE ADVERTISING, HOWEVER INNOCUOUS IT MAY BE, CHARGING THAT "EVERY AD FOR ALCOHOL IS AN AD FOR DRINKING. WE ARE CONCERNED WITH THE MOST INNOCUOUS ADS AND WE WON'T STOP UNTIL SOMETHING PERMANENT IS OBTAINED." THE CONGRESS MUST TURN ITS BACK ON THIS NEO-PROHIBITIONIST VIEW. SINCE THE END OF PROHIBITION, MODERATE DRINKING CAN NO LONGER BE CONSIDERED A CONTROVERSIAL ISSUE. THE CONGRESS SHOULD NOT CONSCRIPT FUNDS FROM BROADCASTERS, ADVERTISERS, AND CABLE OPERATORS TO CARRY OUT AN ENFORCED PUBLIC EDUCATION CAMPAIGN.

FURTHERMORE, THESE COUNTER-ADVERTISING PROPOSALS CANNOT BE SALVAGED BY THE CONGRESS MERELY MANDATING THAT SOME SMALLER PERCENTAGE OF COUNTER-ADS BE REQUIRED. SUCH AN ACTION WOULD STILL CREATE GRAVE PRECEDENTS.

AS TESTIMONY AT THIS HEARING DEMONSTRATES, BROADCASTERS AND ADVERTISERS ARE COMMITTED TO FULLY INFORMING THE PUBLIC OF THE DANGERS OF ALCOHOL ABUSE

THROUGH NEWS, PUBLIC AFFAIRS AND OTHER PROGRAMMING AS WELL AS THE CONTINUED VOLUNTARY DEVELOPMENT OF PUBLIC SERVICE ANNOUNCEMENTS.

THESE GOOD FAITH EFFORTS CANNOT BE IGNORED.

IT SHOULD BE EMPHASIZED THAT PUBLIC SERVICE ANNOUNCEMENTS ARE NOT ANALOGOUS OR SYNONYMOUS WITH COUNTER-ADVERTISING. THERE IS A VAST DISTINCTION BETWEEN THEM. PUBLIC SERVICE ANNOUNCEMENTS ARE VOLUNTARY, DONATED BY BROADCASTERS AND ADVERTISERS, AND WHETHER THEY RUN ON THE MEDIA IS NOT CONTINGENT ON RESPONDING TO PRODUCT ADVERTISING.

COUNTER-ADVERTISING, AS PROPOSED BY CONGRESSMAN SEIBERLING, ON THE OTHER HAND, WOULD REQUIRE GOVERNMENT MANDATED ANNOUNCEMENTS DESIGNED TO ATTACK AND COUNTER TRUTHFUL ADVERTISING OF LEGAL PRODUCTS. FURTHERMORE, THESE COUNTER-ADS WILL ONLY BE TRIGGERED BY WINE AND BEER ADS RUNNING ON THE BROADCAST MEDIA AND CABLE. IF ADVERTISERS REMOVE THESE ADS OR BROADCASTERS AND CABLE OPERATORS REFUSE TO CARRY THEM, NO COUNTER-ADVERTISING WILL RUN.

IN CONCLUSION, OUR THREE ADVERTISING ASSOCIATIONS PLEDGE TO YOU THAT WE WILL CONTINUE TO DONATE OUR CREATIVITY AND RESOURCES TO DEVELOP THE BEST POSSIBLE PUBLIC SERVICE ANNOUNCEMENTS ADDRESSING IN A MEANINGFUL WAY THE PROBLEMS OF ALCOHOLISM AND DRUNK DRIVING. FURTHERMORE, WE WILL WORK COOPERATIVELY WITH OTHER GROUPS IN A NATIONAL PARTNERSHIP TO COME TO GRIPS WITH THESE SERIOUS SOCIETAL CONCERNS.

WE URGE THAT THIS NATIONAL ISSUE NOT BE DEALT WITH ON A SUBJECTIVE, EMOTIONAL AND KNEE-JERK BASIS, AS THE CRITICS WOULD PROPOSE. RATHER, WE HOPE THAT IT WILL BE EXAMINED ON A FACTUAL AND OBJECTIVE BASIS AND THAT THERE WILL NOT BE A BLURRING OF ALCOHOL ABUSE WITH THE LEGITIMATE USE OF ALCOHOL.

WITH THE VOLUNTARY SUPPORT OF THE BEVERAGE, ADVERTISING AND COMMUNICATIONS INDUSTRIES, WE TOGETHER CAN MAKE PROGRESS IN COMBATTING ALCOHOL ABUSE AND DRUNK DRIVING IN THIS NATION --AND WE CAN DO SO WITHOUT IMPINGING UPON ADVERTISING FREEDOM.

THANK YOU. WE WILL BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Mr. **Luken**. Thank you very much, Mr. Bell.

Next we are pleased to hear from Ms. Ann Kahn, first vice president of the National PTA.

We have your testimony, and it will be admitted into the records here, without objection, and you may go ahead and testify in any manner you please. Thank you.

STATEMENT OF ANN P. KAHN

Ms. **Kahn**. Thank you, Mr. Chairman.

I am Ann Kahn, the first vice president of the National PTA. Our organization represents 5.6 million members throughout the United States and American parents in Europe.

We are here today to ask Congress to join us in a new education effort to help prevent our young people from developing a lifestyle that is dependent on alcohol, and we urge the Congress to pass the Fairness in Alcohol Advertising Act, H.R. 2526, introduced by Congressman Seiberling. I won't go into the details of that since that was covered earlier.

We do believe that this new initiative will guarantee what we are looking for, which is a fair presentation about these products, and do much to counteract the portrayal in the ads that alcohol and a drinking lifestyle are synonymous with popularity, success, and happiness.

Our concern is with alcohol use among the young, and that has reached epidemic proportions. Studies have shown that alcohol is the drug of choice for teenagers, and beer is the preferred substance. Our complete statement does carry the statistical data on that, but most critical is the fact that of the estimated 13 to 15 million alcoholics and problem drinkers in the United States, more than 3 million of those are under 18 years of age, and that is our concern.

A Weekly Reader study also found that only 25 percent of youngsters in the sixth and the eighth grade even recognize alcohol as a drug. Only 30 percent of high school students were able to identify alcohol as a drug.

Now, the National PTA doesn't claim that radio and TV ads alone incite experimentation by underage youth, and we certainly don't claim that they alone encourage excessive consumption, but we do believe that the media ads which are not balanced are undermining the educational efforts by parents and schools, and we contend that broadcasters and advertisers owe a responsibility to the public which they are not now meeting in dealing with this significant problem of more than 3 million problem drinkers who are under the age of 18.

We know that television is a very pervasive and influential educator of children. Most of them watch 3½ to 4 hours a day. We also know that 6 million children in this country are latchkey children, and for them, TV is the model for their behavior and, at times, the only consistent source of their values.

For many children in this country, television, whether we like it or not, has become a surrogate parent. Advertisers know that they can reach 90 percent of all teenagers in this country by advertising on television, and 92 percent of all young children.

We are reluctant to depend on the genuine voluntary media self-policing, not only because of our experience for 8 years in trying to remove gratuitous violence from television through that route, but noting also that shortly after the NAB dropped its voluntary code, very quickly vodka ads were on a Boston radio station and were withdrawn only because there was a public outcry.

The network standards and practices also seem unable to screen out advertising which, if not deliberately aimed at youth, clearly has an enormous impact on them. Parents cannot screen those ads. They come at all different times. They are particularly heavy during the sporting events which young people watch and enjoy, and the message on those commercials is: You need a drink to relax, or you really deserve a drink.

Alcohol ads use recognizable athletic heroes, popular comics, rock stars, and their look alikes. All of these are people who appeal not to my age group but to the very young, and it is hard to accept the industry argument that this advertising is not aimed at a youthful market, really only meant to persuade current drinkers to switch their brands.

That is hard for us to take, Mr. Chairman, when we note that beer and wine industries currently spend 100 times more for their broadcast ads than they spend for some of these fine public service announcements which we have seen here today. And most of those PSA ads focus on the exclusive issue of drinking and driving.

What comes across to many young listeners or viewers is that it is OK to drink, it is OK to get drunk; just don't drive when you do it. That is not our approach, and we feel that there is rarely anything on these PSA's that deals with the health, the safety, the family, the societal and the legal consequences of drinking when you are under 18, and now under 21 in most States.

The PTA is very concerned about this, and we have members in every State in this country, and that is why hundreds of thousands of our members and other citizens throughout the Nation joined the Project SMART petition.

I want you to see something that has come to me just during this last week, and it shows further evidence of our concern. This is a scroll, Mr. Chairman, that came to me. It is signed by—not signatures—by people who wrote notes to those of you in the Congress, 700 delegates to the California PTA State Convention last month, calling for equal time for fair messages about the problems associated with alcohol use or misuse, and if that is not possible, a ban on alcohol ads altogether.

We ask Congress to respond to the will of our membership and many other adults in this country who are concerned about what the effect of television advertising on alcohol is doing to the young people in this country, and we ask you to respond by enacting H.R. 2526, the Fairness in Alcohol Advertising Act, and we thank you for this opportunity to present the views of the National PTA.

[Testimony resumes on p. 524.]

[Ms. Kahn's prepared statement follows:]

Testimony by

THE NATIONAL PTA

by Ann P. Kahn

First Vice President, National PTA

Mr. Chairman and Members of the Subcommittee on Telecommunications, Consumer Protection and Finance, thank you for this opportunity to speak to you about alcohol advertising on radio and television. I am Ann Kahn, First Vice President of the National Congress of Parents and Teachers (National PTA), the nation's largest volunteer child advocacy association comprising 5.6 million members in over 25,000 local units in 50 state Congresses, the District of Columbia and Europe.

The prevention of alcohol and other drug abuse among our nation's youth is a top priority of our association. The National PTA helped form the National Coalition for Drug and Alcohol Abuse Prevention, now totalling 15 million members. We use a portion of our 50¢ per capita annual member dues to provide grants to area councils to assist their efforts in developing effective, local programs for parents and students. This spring thousands of our local PTA units availed themselves of National PTA's free Alcohol and Drug Awareness kits which provided examples of activities they might use to educate parents, students, school staff, and the community during Drug Prevention Week.

However, the National PTA is also aware that voluntary efforts, no matter how extensive, will not alone solve the problems associated with youthful alcohol use. We, therefore, have enlisted the support of our elected officials at the state and federal levels to pass legislation to help prevent young people from getting involved with alcohol.

. We have been actively involved in, or led, the state by state drives to raise the legal drinking age to 21, and were among those who spearheaded the enactment of the federal Uniform Minimum Drinking Age Act. In addition, we have called on the Congress to require health and safety warning labels on alcoholic beverages.

The National PTA believes alcohol advertising on radio and television works against efforts to discourage children and teenagers from drinking. Our members' participation in Project SMART's petition drive to either ban alcohol advertising on radio and television or require equal time for messages about the effects of alcohol is a vital component of National PTA's alcohol abuse prevention initiatives.

Beverage alcohol is a mood altering drug with a high potential for abuse and addiction. In fact, Dr. Robert Dupont, former head of both the National Institute on Drug Abuse and the White House Special Office for Drug Abuse Prevention, has stated that were alcohol submitted to the FDA today for mass distribution approval, it would more than likely be listed as a Schedule I drug because of its high abuse potential, low therapeutic indications and little medical use. Were that so, it would join such other Schedule I drugs as marijuana, LSD and heroin. In this respect beer and wine are unique among the many products currenty advertised over the public airwaves.

The use and misuse of alcohol has reaped devastation on young people, adults, families and society. Consider the following:

Alcohol kills 100,000 Americans yearly and drunk driving is the leading cause of death among teenagers. Alcohol does $120 billion worth of economic damage to our nation and is a contributing factor in 66% of homicides, 50% of rapes, 50% of spouse abuse, child abuse and neglect, 70% of robberies committed each year, not to mention its role in juvenile delinquency, all too many fires, falls, drownings and other accidents, liver and cardio-vascular diseases, birth defects, certain cancers and mental retardation.

Consider also:

One out of ten adults in our country is an alcoholic and approximatey five or six students in each American classroom lives in a home with an alcoholic or other chemically dependent parent. According to the Administrator of the federal Alcohol, Drug Abuse and Mental Health Administration, alcohol is a primary culprit in the breakup of American families. The rate of separation and divorce among alcoholics is seven times that of the general population; and two out of five domestic relations court cases involve alcohol.

Moreover, alcohol use among the young has reached epidemic proportions. Studies have shown that alcohol is the drug of choice for teenagers, with beer the preferred substance. Further, of the estimated 13-15 million alcoholics and problem drinkers in the U.S., more than 3 million are under age 18. At least 90 percent of high school seniors say they have used alcohol. According to the latest University of Michigan survey of high school seniors, 67.2 percent said they drink alcohol regularly and 5 percent reported daily alcohol consumption. Morever, younger and younger children are consuming alcohol. For example, in New York state, 50 percent of junior high school students report that they have used alcohol sometime in their lives.

Children as young as elementary school report that they feel pressure to experiment with alcohol. A survey released last month by the Weekly Reader showed that approximately 25 percent of fourth graders felt some or a lot of pressure to try alcohol or marijuana.

When fourth and fifth grade students were asked where they get their information about alcohol, they reported that information came equally from family and television and movies. The Weekly Reader study found also that only 25 percent of 6th graders and 8th graders recognize alcohol as a drug and only 30 percent of high school students identify alcohol as a drug.

We are often told the only purpose of alcohol advertising is to get consumers to change brands. Well respected studies, however, indicate that alcohol advertising is a factor in increasing the consumption of alcohol by youth. Permit me to cite two studies:

The first, by Kim Neundorff of Cleveland State University, indicated that among youngsters aged 12-24, exposure to alcohol ads was the single most important factor in _increasing_ their consumption. The other is the Block and Atkins study, the first comprehensive attempt to determine what correlation may exist between alcohol use and alcohol advertising. It states that because of the intrusive nature and complexity of the ads, viewers, expecially the youngest surveyed, paid more attention to TV advertising than to print ads. That should come as no surprise since the logos, themes and catchy music make those ads more easily recognized and remembered by all ages. And, although rarely were actors under 21 used in alcohol commericals, the younger respondents _perceived_ them to be younger than the actors actually were and described them as "friendly, funloving, goodlooking and happy", all attributes most adolescents strive to acquire.

Mr. Chairman, we are here today to ask this Subcommittee and, indeed, the full Congress, to join us in a new education effort that can help prevent our youth from becoming involved with developing a lifestyle dependent on alcohol. We strongly urge the Congress to enact legislation that would require equivalent broadcast time for public service messages and programming about the broad range of effects of acohol use and misuse.

We support the Fairness in Alcohol Advertising Act of 1985, H.R. 2526 introduced by Congressman John Seiberling (D-OH) on May 15, 1985. This measure would amend the Communications Act to require that if radio and television licenses and cable operators air commercial promotions for alcoholic beverages they must also provide equivalent time for public service messages about the broad range of problems associated with the use and misuse of alcohol.

The broadcast time afforded to responsible spokespersons would have to be of equal duration to that allotted for alcohol ads. The public service messages would be broadcast to an audience of the size and composition that approximates the audience that would view and/or listen to the alcohol commercials.

This provision would ensure that countermessages would be aired during the hours when young people and the general public are watching television or listening to the radio and not when we've all retired for the night. We believe this new initiative will do much to counteract the portrayal in the ads that alcohol and a drinking lifestyle are synonomous with popularity, success and happiness, and thereby guarantee a fair presentation about these products.

While National PTA does not claim that radio and TV ads alone incite experimentation by under-age youth nor that they alone encourage excessive consumption, we do believe that media ads which are not fair or balanced undermine much of the other educational and legal efforts. We also contend that, along with the rights of free speech that broadcasters and advertisers deserve, they owe a responsiblility to the public which they are not now meeting. Is there a significant problem? We believe that statistics indicating that more than three million problem drinkers are under age 18 is a significant public problem. It is a problem that parents must address. But it is also a problem that producers of general programming, broadcasters and advertisers alike cannot and should not ignore or dismiss by saying 'the ancient Greeks drank' or 'Scandinavians have a worse problem.'

Of the total advertising budget for beer, a large percentage goes to media ads. Why? Obviously, because those ads have the greatest impact on the buying public, and television is a very pervasive and influential educator of children. Advertisers are not unaware that TV alone reaches 90% of all teenagers and 92% of all children. Youngsters aged 12-17 watch 3 1/2 hours of TV daily. Those age 2-11 watch 4 hours. Rightly or wrongly, 6 million youngsters in this country are latchkey children for whom TV is the model for their behavior, at times the only consistent source of their values. For many of them, TV has become a surrogate parent.

Given the rights -- and restrictions -- of commerical speech, and, granted the right to be financially successful, advertisers and the broadcast media have a responsibility to police themselves. But the National PTA's past experience on the issue of reducing gratuitous TV violence does not bode well for the prospect of genuine, voluntary media self-policing. Indeed, shortly after the NAB dropped its voluntary code, a vodka ad appeared on a Boston radio-station and certain beer ads showed glasses being brought to drinkers' lips. This practice was not acceptable previously on networks, but the ads were withdrawn only after public outcry and pressure. Apparently not all brewers or wine producers subscribe to their own recommended guidelines for advertising, nor do the network Standards and Practices seem able to screen out all advertising which, if not deliberately aimed at youth, clearly has an impact on impressionable, young viewers. Unlike movies, which are rated for parental guidance (a system which also was neither industry-inspired nor easily accepted), broadcast advertisements pose a problem for parents. They come at all different times, interspersed with all kinds of programming using techniques Sesame Street discovered were the best way to reach and teach young children. During sporting events, which young people as well as their parents watch and enjoy, alcohol beverage ads literally bombard the audience. The messages transmitted are "You need a drink to enjoy, to relax, to be convivial" or "You deserve a drink for doing a job well."

With more and more alcohol ads using high energy, MTV-hype techniques, recognizable athletes, popular comics and rockstar lookalikes, it strains our credulity to accept the industry argument that the media's advertising is not designed to appeal to a youthful market, and is meant only to persuade current drinkers to switch brands. The purpose of all other advertising is not limited solely to shifting the market share, but aims to recruit new users and to increase consumption of products. Advertisements feature exciting beach parties, combos of jiving rock groups, rosy-cheeked down-hill skiers, or actor-athletes making tricky basketball shots. These make drinking seem desirable and glamorous to teen and sub-teen minds and add to their impression that alcohol consumption, per se, is okay, and probably downright healthy.

Recruiting new users, increasing consumption of products, or enticing customers to buy your brand are legitimate endeavors.

But because of the indiscriminate nature of broadcasting, such ads have the potential to create new consumers from among those who may still be under the legal age to purchase thb product. When increased consumption is encouraged among those incapable by physical or emotional maturation, of handling those products, we believe advertisers and broadcasters are engaging at best in questionable activity.

The broadcast media claim there already exists a balanced presentation regarding alcohol's effects. But the beer and wine industries currently spend 100 times more for broadcast ads than is spent for public service annoucements. And although the PTA welcomes the occasional PSA on the risks of drinking and driving, most are aired when children or adolescents are asleep for the night and are no match for the slick repetitive beverage commercials. Furthermore, the ads usually focus exclusively on the issue of drinking and driving. They ignore the fact that whether or not one is old enough to be behind a wheel, alcohol can maim or kill. What comes across to many adolescent listeners or viewers is that it is all right to drink, it's even all right to get intoxicated. Just don't drive when you do it. Rarely, if ever, communicated are the health, safety, family, societal and legal consequences of drinking.

Parents, schools and businesses, including the liquor, wine and beer industries, and the media have a stake in and a responsibility to decrease abuse of all drugs. Those 3 million problem teen and younger drinkers and, indeed all underage youth who experiment with alcohol should alarm us all. The lives lost, the young minds and bodies broken either by drunk driving or alcohol abuse not involving automobiles, are a menace to youth and to society.

The problem of alcohol abuse requires all of us, as adults, to accept our role in either contributing to or exacerbating that problem. There is also a rising tide of concern about drug usage, especially among the young. This concern is exemplified by the hundreds of thousands of PTA members and other citizens throughout the nation who have joined the Project SMART petition drive, imploring the Congress to take immediate action to counteract the barrage of alcohol promotions on radio and TV by mandating equivalent time on the public airwaves for the protection and welfare of our youth, and by providing fair, factual presentation about alcohol and its effects.

We ask the Congress to respond by enacting H.R. 2526, the Fairness in Alcohol Advertising Act.

National PTA, our State branches and local members appeal to the Congress to reduce the incidence of alcohol use and abuse among our children. We are actively engaged in that task and willing to cooperate in every way we can. Alcohol abuse among adults is a national problem; alcohol use among children and adolescents is a national tragedy.

Thank you for this opportunity to present the concerns and views of the National PTA.

PTA CALIFORNIA CONGRESS OF PARENTS, TEACHERS, AND STUDENTS, INC.

May 15, 1985

The Honorable Ronald Reagan
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

Because they care about young people, over 700 of the delegates attending the California State PTA convention last week (May 8-10, 1985) signed a scroll urging you and the Congress to support a ban on alcohol advertising or equal time for health messages. The scroll will be shown to the House Sub-committee on Telecommunications, Consumer Protection and Finance of the House Energy and Commerce Committee on May 21, 1985.

Enclosed are some of the delegates' comments.

As a bill supporting equal time for health messages is introduced, we hope you will lend your support to its passage and then sign it into law.

Sincerely,

Bobette Bennett
President

Barbara Emerich
Advocate for
Federal Legislation

Enclosure
cc: California Senators and Congressional Representatives

930 GEORGIA STREET • P.O. BOX 15015 • LOS ANGELES, CALIFORNIA 90015 • (213) 620-1100

PTA CALIFORNIA CONGRESS OF PARENTS, TEACHERS, AND STUDENTS, INC.

QUOTATIONS FROM THE SCROLL SIGNED BY DELEGATES AT THE CALIFORNIA STATE PTA 1985 CONVENTION

From a student who is a PTSA president: "We want our youth to grow up to be successful citizens, yet all of our commercials on TV and radio push alcohol. There are hardly any health messages!!! The sports figures and idols of today's youth are promoting these horrible habits! Something needs to be done and urgently. Please hear our concerns. We are the future. We are the youth who are affected."

From a Navy man: "I am fully committed to this particular issue and encourage and solicit your own support. As a U.S. Navy man, I realize the import of a drug and alcohol free Navy. I also realize the import of leadership by example, something I admire in you. But the youth of this nation do become the backbone of our armed services when they enlist or are commissioned. The most important aspect of this measure is that it addresses this issue early in the development of our youth.

"With proper support from your staff and the leadership of your great office, many of the problems that we are experiencing in our society today in the alcohol and drug area may be lessened significantly and even eradicated completely. Our nation, our military, our people will benefit tremendously. May God richly bless you, sir."

From mothers: "Ban the seductive advertising of drugs and alcohol and replace with health messages of not using chemicals to get 'high on life.' Please promote help for those addicted to chemical use and especially help for families living with a chemically addicted person."

"As the daughter of an alcoholic, I have seen from experience the destruction that alcohol can do to a family. We need to educate our youth on the hazards of this drug, so that their future and ours can be a better place to live. We do not need sports figures, celebrities, to glamourize a product that causes death, disease and/or destruction. We need to show alcohol for what it is."

"My teenage son loves football and idolizes the players. It disturbs me when the alcohol (beer) ads appear continuously throughout the football game."

"At our high school--for the past 20 years of it being open--we have had a death of a teenager every year with the use of alcohol and driving. Please help make up some standard."

"Why do we let our kids believe that the only way they can be sexy, beautiful or rugged is with a (crutch) beer in our hands?"

"I do not favor a ban, but I do support health messages."

-MORE-

BEST COPY AVAILABLE

"Please remove the advertizing of alcohol from TV. Our children are alredy faced with so many dangers. Please assist us with helping our children. I am sure that your wife would also urge you to help us since we have so actively supported the Chemical People project."

"The message to our kids should be 'moderation.' We can't convey the message if every TV commercial screams 'excess is fun.'"

"Everyone knows commercials work!! We don't need to advertise to get more problems."

"Role models are exceptionally important to our young people and for this reason alcohol advertising is a powerful force when done by our well known athletes. It is not in the best interest of our young people and our future to directly or indirectly promote drug use."

"My husband, Eagle Scout son, Occidental College Junior, developmentally disabled 18 year old (Down's Syndrome) and I ask you to please use your influence to ban alcohol TV and radio advertising for the sake of all youth, who are the FUTURE of our country."

"Please do as much for the problem of alcohol abuse in our children as Mrs. Reagan has done. She and the children of our country need your help!"

"Considering the effect that alcohol has on the health of the user's body as well as the unborn children, we urge you to support any legislation that may be necessary to stop making it look attractive to young people, who, once started, cannot break the habit."

* * * * *

Mr. LUKEN. Thank you, Ms. Kahn. Next we ask William Drake, who is the Associate Director in the compliance operations of BATF, Bureau of Alcohol, Tobacco, and Firearms.

STATEMENT OF WILLIAM T. DRAKE

Mr. DRAKE. Thank you, sir.

Mr. Chairman and members of the committee, it is a privilege to appear before this committee to discuss the issue of alcoholic beverage advertising. I understand that my staff have provided members of this committee with a substantial amount of information on ATF's legislative authority and previous policies on alcohol advertising and I will keep my remarks brief.

As the agency responsible under the Federal Alcohol Administration Act for monitoring and regulating alcoholic beverage advertising, the Bureau of Alcohol, Tobacco, and Firearms is certainly aware of the public concern regarding alcohol abuse. At every level, individuals, national organizations, State legislators, the Congress, the White House, and indeed, many in the alcohol industry have spoken out forcibly against the mounting cost of lives lost and talents wasted as a result of alcohol abuse.

However, as great as our concern as citizens is, it should be emphasized at the outset that ATF's statutory authority is limited with regard to regulating alcoholic beverage advertising. We can only do what we are allowed to do under the law.

Thus, ATF cannot prohibit advertising per se, and we cannot expand our regulations beyond the scope of the law in order to address related social issues.

ATF's authority with regard to alcoholic beverage advertising is established by the Federal Alcohol Administration Act. Among other things, the FAA Act authorizes regulatory action to prevent deception of the consumer, to provide the consumer with adequate information on the identity of the product.

In addition, the act provides for the regulation of advertising by setting requirements for what must be stated, for what cannot be stated in such advertising. Specifically, the act prohibits any advertising claims that are false, disparaging, deceptive, misleading, or likely to mislead.

In 1954, a predecessor agency of ATF established a ruling prohibiting active, prominent athletes from appearing in alcoholic beverage advertising. This decision was based on the determination that a prominent athlete's appearance endorsing an alcoholic beverage would give the misleading impression that drinking alcohol is conducive to athletic skill or would not hinder the athlete's performance.

In November 1978, ATF published an advance notice of proposed rulemaking addressing the advertising regulations. One of the major issues was whether the earlier rule on athletes should be established as a regulation, be discontinued or be expanded.

This was followed by a notice of proposed rulemaking in December 1980 in which ATF made specific regulatory proposals covering a variety of advertising issues, including the use of athletes in advertising alcoholic beverage.

Two public hearings relating to this proposal were held in 1981. In August 1984, ATF adopted rules of several issues related to labeling. However, due to complexity and controversy surrounding the use of athletes in alcoholic beverage advertising, the Bureau decided to consider that issue separately.

We are currently studying several courses of action in this area. In doing so, it is clear to us that there are a number of concerns about alcoholic beverage advertising which are based on broader social issues than are presently covered by the FAA Act. These issues are not within our jurisdiction.

It is also clear that more data is needed concerning such issues as the use of retired athletes, managers, coaches, other celebrities in alcoholic beverage advertising, and the linkage, if any, to alcohol abuse.

In closing, I would like to emphasize that ATF has a history of supporting the efforts of consumers and the industry in control of alcohol abuse. For example, we have published a Rex Morgan illustrated booklet concerning the fetal alcohol syndrome. We monitor the moderation campaigns of the industry, such as the industry's campaign against driving and drinking.

ATF has also joined forces with the industry and other Government agencies in conducting public awareness campaigns on alcohol-related problems, and we are a member of the U.S. Department of Justice professional group steering committee, which addresses alcohol and drug abuse among juveniles.

We share this committee's and the public's concern regarding alcohol abuse, and we welcome the efforts of the subcommittee. Hearings such as these will serve to air the various opinions and approaches to the issue of alcohol abuse in this country and to the issue of advertising. They will help to inform all of us with responsibilities in this area.

Thank you, Mr. Chairman.

Mr. LUKEN. Thank you very much, Mr. Drake.

Next, I believe, is Mr. Bernard Mann, president of the National Radio Broadcasters Association.

Mr. Mann, I believe we have your testimony, and without objection, it will be introduced into the record. You may proceed.

Thank you.

STATEMENT OF BERNARD MANN

Mr. MANN. Thank you, Mr. Chairman.

In addition to my responsibilities as president of the National Radio Broadcasters Association, I own and operate four radio stations, an FM radio station in High Point, NC, an AM station in Greensboro, NC, and a AM/FM radio stations in Raleigh, NC.

The NRBA is the Nation's largest organization devoted solely to the concerns of radio broadcasters and the listening public. Our 2,000 AM and FM stations serve communities throughout the United States.

Like the other witnesses, I have a longer statement for the record and will simply highlight our views on proposals to either ban broadcast advertisements for beer and wine outright or to mandate counteradvertisements through Federal regulations.

The NRBA and its members, as facts amply demonstrate, are acutely aware of the alcohol-abuse problem that affects our Nation, and for a long time, we have been at the forefront of the battle to combat this national ill. But we strongly oppose the imposition of an advertising prohibition or mandatory counteradvertising as arbitrary, unnecessary, and counterproductive when beer and wine are advertised.

We want to make clear that we oppose advertising bans or federally-mandated counter advertising for a legal product on any broadcast medium. This is especially so where in this case the ordinary and intended use of the product is not dangerous or harmful to one's health, where it is safely enjoyed in moderation by millions of Americans and where there is no causal relationship that has been established between the advertisement of the product and the perils of its abuse.

Furtheremore, to the extent that those in favor of restrictive proposals cite the visual impact of television commercials, the allegation of such a relationship is even more tenuous in the case of radio.

Moreover, the industry is already undertaking a broad, effective campaign to combat alcohol abuse. I want to personally assure you of the radio industry's profound concern about this vital issue and tell you what we are doing about it.

We recently conducted the most authoritative survey to date on the extent of antialcohol abuse programming provided by radio broadcasters. Over 800 stations responded to our survey. The results have been attached to my written testimony, and they show that America's stations donated well in excess of $125 million worth of broadcast time last year for alcohol abuse public service announcements and programming as part of our strong public service tradition.

This is an example of self-regulation and responsiveness to community needs at its very best. We listen to our listeners and share their concerns. Ninety-eight percent of the respondents regularly broadcast alcohol abuse announcements, and these were not throwaway spots in dead times. They were evenly spaced throughout the broadcast day.

Moreover, our members' efforts are targetted at the particular needs and responses of the local communities that they work in, and they work with the particular format of these stations. So they take the form of interviews, discussions, news reports, dramatic programming and public service announcements.

In addition to our commitment to public service, the NRBA and its members recognize that such campaigns make sound business sense. We must be responsive to our communities in order to survive economically. Imposition of mandatory requirements is not only unwarranted and unnecessary, but could prove counterproductive by hampering our ability to mount the most effective antialcohol abuse campaigns.

There is certainly no basis for imposing one more layer of complex, burdensome bureaucratic regulations dictating how broadcasters must participate in the Nation's antiabuse effort. Radio stations must retain their flexible ability to respond to their audiences, particular concerns that they have, and to gear their antialcohol abuse campaigns to their local needs.

Rigid, mandated counter advertising would inhibit or destroy that flexibility.

Finally, let me thank you for the opportunity, Mr. Chairman, to be here today, and I will certainly be willing to answer any questions.

[Testimony resumes on p. 544.]

[The prepared statement of Mr. Mann and supplemental letters follow:]

STATEMENT
of the
National Radio Broadcasters Association

Mr. Chairman, my name is Bernard Mann. I am the president of the National Radio Broadcasters Association ("NRBA"), a non-profit trade association comprised of approximately 2000 AM and FM radio stations located throughout the United States. The NRBA is devoted solely to the concerns of radio broadcasters and the listening public. I also own and operate AM and FM stations in High Point, Greensboro and Raleigh, North Carolina. My testimony reflects the NRBA's position with respect to the current proposals to prohibit the advertisement of beer and wine on television and radio stations or to require "equal time" for the presentation of counterbalancing messages.

The NRBA and its members, as facts amply demonstrate, are acutely aware of the alcohol abuse problem that affects our nation and, for a very long time, we have been in the forefront of the battle to combat this national ill. But we strongly oppose the imposition of an advertising prohibition or mandatory counteradvertising as arbitrary, unnecessary and counterproductive when beer and wine are advertised.

We wish to stress several points. First, the beer and wine advertising issue has been presented, and is perceived, primarily as a television issue. Therefore, little, if any, attention has been given to the place of radio in the beer and wine advertising controversy. Nevertheless, the controversy has given rise to proposals which indiscriminately target radio, along with television . This is true both for the proposed prohibition of such ads, as well as for the concept involving "equal time" counteradvertising. On behalf of the nation's radio broadcasters, we want to make clear that we stand with our colleagues in television and strongly oppose any proposal which prohibits or restricts the advertising of any legal product, such as beer and wine, or to compel counteradvertising with respect to such products on any broadcast medium, particularly when products such as beer and wine, when used in moderation as intended, are not harmful to anyone's health. Beer and wine is enjoyed in moderation by millions of Americans. There is no proven causal relationship between beer and wine advertising and the perils of abuse.1/

We would point out, however, that while we do not believe a causal relationship between beer and wine advertising on any broadcast medium and alcohol abuse has been established, certainly the allegation of such a relationship is even more tenuous in the case of radio than with respect to television. For example, those who allege a causal relationship usually cite the potential visual impact

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1/ We will not dwell on the lack of a causal relationship between beer and wine advertising and alcohol abuse because we are aware that other witnesses will provide ample testimony on that point. However, we want to stress that we fully subscribe to this point of view and will be happy to supply the subcommittee with the data we have collected.

of endorsements by celebrities, of dramatically idealized romantic situations or of other striking images in TV commercials. None of these visual aspects are present in radio advertising which relies on the spoken word to reach consumers.

In view of the lack of evidence regarding the direct public benefits to be derived from any restrictive beer and wine advertising proposals, the NRBA seriously doubts whether such "content regulation" would be constitutional. The Supreme Court has recently established the principle that commercial expression, i.e., advertising which promotes the sale of products or services, enjoys substantial first amendment protections. Linmark Associates, Inc. v. Township of Willingboro, 431 U.S. 85 (1977); Virginia State Board of Pharmacy v. Virginia Citizens Consumers Council, Inc., 425 U.S. 748 (1976); Bigelow v. Virginia, 421 U.S. 809 (1975). While the Court has recognized that commercial expression, like other forms of expression, is not absoutely protected from all forms of government regulation, none of the considerations which have been held to justify the regulation of the content of commercial expression are involved in the so-called "curative" proposals under discussion; for example, the necessity to regulate false or deceptive advertising or the necessity to protect or promote an important societal interest which could not be effectively protected or promoted by other less restrictive means.

First, the Federal Government's power to regulate false advertising in interstate commerce is established. But the proposed legislation does not purport to regulate beer and wine commercials which are false, deceptive or misleading. Rather, the legislation would regulate all advertising for such products, regardless of how truthful or factual that advertising may be.

Second, even assuming that some federal action is arguably justified, the proposed legislation does not meet the "least restrictive alternative" test to protect or promote an important societal interest.

Moreover, there is no showing that legislation is essential to protect the public concerns involving interests which could not be more effectively protected by other means having a less harmful impact on the exercise of free speech, *i.e.*, the untrammeled operation of the marketplace.[2/] It is common knowledge that alternative means, other than mandatory legislation, do exist to promote Congress' goals. For years, radio broadcasters have, on their own, without the impetus of government regulation, been involved in community efforts to inform the public of the dangers of alcohol abuse and, particularly, of drunk driving.

2/ As the Supreme Court made clear in *Virginia Pharmacy*, *supra*, and reiterated in *Linmark Associates*, *supra*, a "strong interest" of government in the products or services which are the subject matter of advertising is insufficient to save a regulation which unnecessarily restricts the content of the advertising from being struck down as unconstitutional.

In January of this year, the NRBA conducted a national survey of radio stations to determine exactly what is being done by radio broadcasters at the local level to combat the problems of alcohol abuse. We received responses from over 800 station managers. We believe our survey, while not definitive, is representative of the industry's performance on these issues. The NRBA's survey is the most authoritative study to date on the nature and extent to which broadcasters are presenting anti-alcohol abuse programming.

The results of the survey, a summary of which is set forth in an exhibit attached to this testimony, show that during the preceding year radio broadcasters devoted well in excess of $100 million worth of broadcast time to alcohol abuse-related public service announcements and public service programming. Of the stations participating in the survey, 98 percent had broadcast public service announcements on alcohol abuse. Moreover, those announcements were not throw away spots aired in dead time slots; they were scheduled and aired throughout the entire broadcast day.[3]

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[3] Because alcohol beverage advertising in association with sports programming has been raised as an issue of concern, the NRBA asked The Arbitron Ratings Company ("Arbitron") to provide preliminary data from a few markets on the age distribution of the radio audience for such programming. It had been assumed that this was an area of concern because it was believed that a large number of teenagers listen to sports programs. However, the preliminary data has shown that this assumption is not correct. Arbitron reported that statistically a relatively small number of teenagers listen to sports on radio -- for example, less than six percent of the radio audience listening to baseball is comprised of teenagers.

The imposition of mandatory legislation is not necessary to encourage broadcasters to continue their efforts in this area. Broadcasters have in the past and will in the future continue to provide the kind of public service programming responsive to the concerns of their communities. The record of modern radio public service broadcasting shows beyond question that we are concerned, involved members of our communities.

For those who remain skeptical despite radio's impressive record, we would point out that we must be responsive to the needs and interests of our communities in order to survive economically. We are now running $100 million worth of alcohol-abuse related programming without legal requirements. We are geared to responding to the needs of our communities; we react to the concerns of our communities. We fulfill our responsibilities to the public not only because it is in our commercial self-interest to do so but because as radio broadcasters we are members of the communities we serve and thus share in the concerns of those communities. No radio station can afford not to operate in this manner.

Moreover, in view of the long-standing non-mandated efforts by radio broadcasters to combat the abuse of alcohol, as exemplified by the results of the above survey, the imposition of mandatory regulation is not only unnecessary, but also could prove to be counterproductive. Radio broadcasters have been responding on their own to the particular alcohol abuse concerns of their communities within the context of their own programming formats -- through public service announcements, discussion programs, news reports, public affairs and other public service programs. Mandated counteradvertisements would be counterproductive because they would restrict the creativity and flexibility of individual broadcasters in responding to their particular communities' needs for alcohol-abuse information in a manner calculated to be most effective for the local audience.

Therefore, the National Radio Broadcasters Association urges the Congress to reject prohibition related and counteradvertising proposals. We commend the Congress' efforts to protect the public against the perils of alcohol abuse. But we firmly believe that continued self-regulation -- not a new complex layer of burdensome bureaucratic rules and regulations -- is the answer to this problem. The radio industry's response to the public's concern about alcohol abuse demonstrates how marketplace forces do work for the benefit of the public -- that radio broadcasters do not need government regulation to assure that they operate as concerned members of the communities in which they live.

NRBA

NRBA
Radio Survey
On
Alcohol-Related
Public Service Announcements
Programming and
Promotions

Overview

The NRBA, in the interest of quantifying the extent of public service announcements, programming and promotions by the radio industry the past year which addressed alcohol abuse and drunk driving, conducted a survey of radio stations across the United States in January, 1985.

Methodology:

The survey was sent to a random sample base of 4,000 radio station general managers as selected by an independent mailing source, the Radio Information Center, New York, NY. This sample base represented approximately half of all commercial radio stations in the U.S. (8,470).

The general managers were asked to estimate what their individual station had done the past twelve months in regard to anti-alcohol abuse messages including programming and promotions that delt with drunk driving, moderation messages, health problems of alcohol abusers and alcoholics, treatment programs, organizations seeking to alleviate alcohol problems, student initiatives, and any other relevant topics. They were asked to report the specific daypart placement (drive-time, midday, night, weekend) and calculate the total commercial value of that time.

The surveys were broken down by market size (Metro: Top 100, 101+ and Non-Metro) in which all tabulations and projections were based.

Response & Calculation

In a four week period, 812 surveys were returned (approximately a 20% response rate) of which 664 surveys, or 83% were usable in tabulation. Averages were calulated on the three individual market size break-outs and as a national total. For the estimate of "commercial value," the three individual market groups were calculated by each category (PSA's, Programs, promotions), and the percent of stations participating against the station universe in that group. Those nine separate dollar-value calculations were then totaled to determine the national estimates. (See attached "Commercial Value Estimates.")

National Radio Broadcasters Association
2033 M Street, N.W., Suite 506, Washington, D.C. 20036 • (202) 466-2030

Summary:

Public Service Announcements: 98% of all stations surveyed had run public service announcements in the past 12 months which were alcohol-abuse related. Their schedules averaged 24 spots per week with 26% of PSA's running in drive-time, 24% mid-day, 25% at night, and 25% on weekends. Alcohol-abuse related PSA's represented 19% of the total of all PSA's run on any subject. The total commercial value of alcohol-abuse related PSA's the past twelve months was $97,901,249.

Programming:

67% of all stations surveyed ran an average of three hours per month in alcohol-abuse related public-service programming. The programs ran 25% in drive-time, 24% midday, 11% at night, and 37% on weekends. The total commercial value of alcohol-abuse related programming the past twelve months was $19,915,150.

Promotions:

22% of the stations surveyed provided an average of 91 hours "on-air" and 41 hours "off-air" in alcohol-abuse related promotions the past twelve months. The total commercial value of the "on-air" portion of the promotions was $11,055,519.

Total:

The total commercial value of all alcohol-abuse related public service announcements, programming and promotions by radio the past twelve months was $128,871,918.

Commercial Value Estimates for Radio Alcohol-related PSA, Programs, Promotions

Market Size	Top 100	101+	Non-Metro	Total
Total Stations	2,100	1,900	4,470	8,470
Stations Respond	167	136	361	664
PSA's				
% Partic.	96%	99%	99%	98%
# Stations	2,024	1,880	4,425	
Avg. Value	$23,482	$11,854	$6,342	
Total Value	$47,540,504	$22,295,493	$28,065,252	$97,901,249
Program				
% Partic.	74%	59%	67%	67%
# Stations	1,554	1,118	3,033	
Avg. Value	$6,058	$3,986	$1,993	
Total Value	$9,414,132	$4,454,941	6,046,077	$19,915,150
Promotions				
% Partic.	26%	29%	18%	22%
# Stations	545	545	817	
Avg. Value	$12,204	$3,789	$2,850	
Total Value	$6,662,838	$2,063,903	$2,328,778	$11,055,519
Total	$63,617,474	$28,814,337	$36,440,107	$128,871,918

NRBA ALCOHOL-RELATED PUBLIC SERVICE SURVEY

January, 1985

A. PSA Campaigns

1) Average number of alcohol-related PSA's per week:

Top 100	100+	Non-Metro	National Avg.
23.6	26.5	23.6	24.2

2) Schedule (percentage of total alcohol-related spots):
Drive time___% Midday___% Night___% Weekend___%

Top 100- 25.7 22.6 25.0 26.7
101 + - 25.1 23.2 26.7 24.6
Non-Metro- 25.6 25.8 23.5 25.1
National Avg.- 25.5 23.9 25.1 25.5

3) Total number of alcohol-related PSA's in the last 12 months:

Top 100	101 +	Non-Metro	National Avg.
706.4	812.4	834.6	797.9

4) Total commercial value of alcohol-related PSA time in the last 12 months.

Top 100	101+	Non-Metro	National Avg.
$23,482	$11,854	$6,342	$11,564

5) Of all PSA;s on any subject, % which are alcohol related:

Top 100	101+	Non-Metro	National Avg.
19.2%	19.2%	19.4%	19.3%

B. Public Affairs Programming

1) Average hours of alcohol-related programming per month:

Top 100	100+	Non-Metro	National Avg.
4.0	1.4	2.9	2.9

2) Schedule (percent o total alcohol-related programs):
Drive time___% Midday___% Night___% Weekend___%

Top 100 - 15.0 20.1 10.9 50.0
101+ - 25.0 16.1 15.6 41.8
Non-Metro - 34.5 36.9 6.7 21.1
National Avg. - 24.8 24.4 11.0 37.4

3) Total hours of alcohol-related programming in the last 12 months:

Top 100	100+	Non-Metro	National Avg.
46.9	20.1	21.4	27.9

4) Total commercial vlaue of hours of alcohol-related programming in the last 12 months:

Top 100	101+	Non-metro	National Avg.
$6,058	$3,986	$1,993	$3,346

C. Promotions

1) Total on-air hours of alcohol-related promotions:

Top 100	101+	Non-metro	National Avg.
18.4	27.3	17.9	21.2

2) Total commercial value of on-air hours of alcohol-related promotions in the last 12 months:

Top 100	101+	Non-Metro	National Avg.
$12,204	$3,789	$2,850	$6,003

3) Total off-air hours of alcohol-related promotions:

Top 100	100+	Non-Metro	National Avg.
51.0	21.5	49.1	41.2

D. Total Commercial Value of all Alcohol-related PSA's Programming & Promotions Last 12 Months

Top 100	100+	Non-Metro	National Avg.
$63,617,474	$28,814,337	$36,440,107	$128,871,918

Mann Media

POST OFFICE BOX 2808
HIGH POINT,
NORTH CAROLINA 27261
(919) [illegible]

Bernard Mann
President

June 13, 1985

The Honorable Timothy E. Wirth
Chairman
Subcommittee on Telecommunications,
Consumer Protection and Finance
Rayburn House Office Building B-331
Washington, D. C. 20515

Dear Mr. Chairman:

Thank you again for permitting me to testify on May 21, at your hearing on beer and wine advertising. I hope the information provided is useful in your and the committee's consideration on this matter.

During the questioning, you expressed both an interest and a concern about radio's contribution in public service announcements after the discontinuance of cigarette advertising on radio. In that regard, I have enclosed a letter from the Vice President for Public Relations of the American Cancer Society, detailing their view on radio's role in the continuing anti-smoking campaign. As you can see, the American Cancer Society, the primary national organization concerned with the anti-smoking issue, strongly believes that radio did not or has not "dropped the ball" on the anti-smoking issue and, in fact, continues to be a major contributor in their efforts.

I hope that this added information, in conjunction with my testimony sheds further light on radio's unique role in dealing with community issues and concerns.

Sincerely,

Bernie Mann

BM:amw

cc: ✓Ms. Sarah Berry, The Honorable Thomas Rogers

WGLD
Greensboro
High Point

WKIX
Raleigh
Durham
Chapel Hill

WOJY
High Point
Winston-Salem
Greensboro

WYYD
Raleigh
Durham
Chapel Hill

AMERICAN
CANCER
SOCIETY® NATIONAL OFFICE

May 31, 1985

Peter Ferrara
National Radio Broadcasters Assn.
2033 M Street
Washington, DC 20036

Dear Mr. Ferrara:

During the late 60's and early 70's the anti-smoking campaign benefitted immeasurably from the counter advertising position it held. Then when cigarette advertising was dropped from broadcasting, the fear grew that messages about the dangers of smoking would drop out of sight and sound.

The contrary took place. Anti cigarette smoking messages are carried intensively by radio stations throughout the year. We are especially pleased with the huge support that the Great American Smokeout receives. That's the third Thursday in November when smokers are encouraged to quit for the Day.

Radio is a powerful force in support of this Day. All kinds of tips and encouragement are provided to smokers to quit by news personalities, disc jockeys, commentators, phone-in programs. Some stations prior to the event will provide guidance on a daily basis on quitting and offer pamphlets and booklets from the Society.

Here in my office, our staff are on the phone with radio stations from all over the country providing them with news angles on the Day for their local listeners.

The Great American Smokeout involved over 20 million smokers last year. Some quit part of the time--five million did it for 24 hours. We couldn't have achieved results like this without the active wholehearted interest of radio broadcasters.

And that same support continues throughout the year in individual, creative fashion. No wonder adult smoking is down from a high of 48 percent in the 60's to 30 percent today.

Sincerely yours,

Irving Rimer
Vice President for
Public Relations

IR/js

AMERICAN CANCER SOCIETY, INC
4 WEST 35TH STREET, NEW YORK, N.Y. 10001 · 212-736-3030

1771 N Street, N.W.
Washington, D.C. 20036

John B. Summers
Executive Vice President
(202) 293-2152

National Association of Broadcasters

June 5, 1985

The Honorable Tim Wirth
Chairman
Subcommittee on Telecommunications,
  Consumer Protection and Finance
Rayburn House Office Building B-331
Washington, D. C. 20515

Dear Mr. Chairman:

During your hearing on May 21, 1985, "Beer and Wine Advertising: The Impact of the Electronic Media," there appeared to be a sense among several panelists that the 1970 law (PL 91-222) banning the advertising of cigarettes on the electronic media was a precedent for similar action relative to beer and wine. I would like to take this opportunity to review what did transpire during the cigarette issue so persons reading the record in the current controversy can judge for themselves whether PL 91-222 really stands for anything other than the cigarette industry preserving and protecting their non-broadcast advertising.

Let me say initially that I am not going to reiterate the inherent differences between cigarettes and beer and wine. The hearing record is replete with testimony as to those obvious differences.

On June 5, 1969, the House Interstate and Foreign Commerce Committee reported H.R. 6543. The bill strengthened the then current warning on cigarette labels to read:

> Warning: The Surgeon General has determined that cigarette smoking is dangerous to your health and may cause lung cancer and other diseases. (Emphasis added)

H.R. 6543 also extended for six years a provision of the 1965 Federal Cigarette Labeling and Advertising Act (PL 89-92) which prevented federal regulatory agencies from making further restrictions on cigarette advertising. It passed the House on June 18, 1969, without amendment. Significantly, H.R. 6543 did not propose to ban the advertising of cigarettes on the electronic media.

The Senate Commerce Committee held a hearing on H.R. 6543 on July 22, 1969. The first witness was Joseph Cullman, Chairman of Philip Morris, speaking on behalf of the nine cigarette companies. He stated that if granted antitrust immunity his industry was prepared to terminate all broadcast advertising by September 1970. Though not stated as conditions precedent to such a voluntary move, he urged that the following provisions be included in the bill:

> Prohibition against any state or local health-related regulation or prohibition of cigarette advertising.
>
> No warnings in print or other non-broadcast cigarette advertising.
>
> Retention of the then existing packaging warning: "Caution: Cigarette Smoking May Be Hazardous To Your Health."
>
> Make permanent rather than extend for six years the provision of the 1965 Act prohibiting federal regulatory agencies from making further restrictions on cigarette advertising.

On December 5, 1969, the Senate Commerce Committee reported a version of H.R. 6543 which banned the advertising of cigarettes on radio and television. It also changed the warning on cigarette packaging and prohibited state or local health-related regulation or prohibition of cigarette advertising. The Senate on December 12th passed and sent to conference a slightly altered version of the Committee bill. Neither the broadcast advertising prohibition or the preemption of state or local action was changed.

The Senate/House conference took place on March 3, 1970 and both houses adopted the conference report by March 19th with only a minor amendment.

Thus, H.R. 6543 became PL 91-222. Its provisions:

> Banned the advertising of cigarettes by radio, TV and other electronic media.
>
> Prohibited state and local authorities from adopting health-related regulations or banning of cigarette advertising.

Changed the cigarette package warning to read: "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health."

Precluded the FTC from imposing health-related regulation on non-electronic advertising of cigarettes until July 1, 1971 and thereafter only with close Congressional scrutiny.

When one steps back and looks at the whole scenario it should be obvious that the cigarette industry fared very well:

They were able to remove themselves from competitive advertising in the broadcast media where they were spending 77 percent of their ad budgets.

They could advertise freely in all non-electronic media without fear of state or local regulation.

They avoided a House version of the package warning which referred to cigarettes possibly causing "lung cancer and other diseases."

They obtained tight Congressional controls over FTC regulation of their print and other non-electronic advertising.

During Mr. Cullman's testimony before the Senate Commerce Committee, he was repeatedly asked what the cigarette industry would do with the ad dollars ($240 million) which would no longer be spent in radio and television. Though he never provided an answer to the question, history makes very clear where that money, and more, went:

CIGARETTE ADVERTISING*

	1970	1980
Newspaper	$14 Million	$300 Million
Outdoor	7 Million	193 Million
Magazine	50 Million	266 Million

*Source: FTC Report to Congress pursuant to the Federal Cigarette Labeling and Advertising Act for the year 1980.

The purpose of this letter is not to indict the cigarette industry. They did what was in their best interests at the time. The NAB Code had called for a phase out of cigarette ads by September 1973. Moreover, under a since recinded FCC Fairness Doctrine ruling, every 3-5 cigarette ads aired by broadcast stations had to be countered by an anti-smoking message. These were certainly factors in the cigarette companies' decision.

The questions for the fair minded observer of this scenario are: (1) for whose benefit was the prohibition really enacted and (2) what precedent did it really set?

Your inclusion of this letter in the record of the May 21st hearing would be greatly appreciated.

Sincerely,

John B. Summers

John B. Summers

cc: All Members of Subcommittee on
Telecommunications, Consumer Protection and
Finance
All Members of House Select Committee on
Children, Youth and Families

Mr. LUKEN. Thank you, Mr. Mann. Very good.

Next we will ask Dr. Charles Atkin, professor, department of communications, Michigan State.

Do you have a written statement, Mr. Atkin? I believe you do.

Mr. ATKIN. Yes.

Mr. LUKEN. Without objection, it will be received, and you may proceed.

STATEMENT OF CHARLES K. ATKIN

Mr. ATKIN. My name is Charles Atkin, and I am an independent mass media researcher specializing in the scientific analysis of the way that television messages influence audiences, particularly young viewers.

I have conducted the most comprehensive investigation of the content and effects of alcohol advertising sposored by several Federal agencies, and I have reviewed the available studies published by other researchers in this country and abroad.

Based upon my assessment of the existing body of research, I believe that there is sufficient evidence to establish that a connection exists between alcohol advertising and the public's alcohol attitudes and consumption patterns. I will briefly present five key findings regarding advertising effects.

First, research shows that advertising influences the brand preferences of current drinkers to a significant degree.

Second, advertising also has a broader impact in significantly increasing the absolute volume of alcohol consumption, regardless of brand.

Third, advertising contributes to the development of positive images of drinkers and favorable attitudes toward drinking as an acceptable, rewarding and attractive practice.

Fourth, there is a tentative indication that advertising has a limited influence on alcohol abuse. Specifically, there is a positive correlation between exposure to alcohol advertising and drunk driving.

Fifth, regarding teenagers, the research shows that the typical underage adolescent is exposed to nearly 1,000 beer, wine and liquor advertisements in the mass media each year; that advertising has an important impact on liquor consumption and a modest impact on beer drinking among teenagers; and that even among youth who are not yet drinkers, ads seem to increase their intention to drink in the future by creating a positive predisposition toward alcohol.

One of the primary reasons why alcohol advertising is effective pertains to the nature of the content presented in the messages. Beer and wine commercials clearly place consumption in a positive light by glamorizing drinking through lifestyle portrayals of the social and psychological benefits of alcohol consumption.

Content analysis studies demonstrate that several themes and appeals are widespread: Sociability, masculinity, escape, femininity, attractive characters appearing with the product, along with associations between alcohol and elegance, romance and adventure. The negative side of drinking is almost never depicted.

There are several policy implications that can be drawn from the scientific literature which may alleviate problematic consequences of alcohol advertising. I suggest that the most promising approach would combine restrictions on advertising content and intensified educational campaigns to discourage misuse of alcohol.

Specifically, I recommend regulation of certain forms of lifestyle portrayals that glamorize the practice of drinking by linking alcohol to rewarding psychological and social outcomes, especially when portrayed by attractive, youthful, and famous characters serving as role models. These appeals seem to promote prodrinking attitudes and greater consumption levels but are not essential to the brand-shifting goals of advertisers.

The undesirable side effects of advertising, such as youth drinking, drunk driving, and excessive consumption, can be directly addressed by way of public service messages and counter advertising. Although the industry has displayed substantial progress with their voluntary efforts in disseminating drunk driving public service messages over the past few months, there is a need for more extensive dissemination of opposing viewpoints regarding the negative side of alcohol consumption which would counteract the portrayals presented in the ads.

Thus, I endorse the concept of H.R. 2526, the Fairness in Alcohol Advertising Act of 1985, although I think it is neither practical nor necessary to require fully equal time.

The fairness doctrine should be applied to this case of alcohol for several reasons. First of all, alcohol advertising influences young audiences below the legal age for consuming the product. Second, the lifestyle themes portray only one side of the consequences of drinking without disclosing the detrimental consequences that might occur, particularly in the domains of health, safety, job performance, and social behavior.

Third, the public is not sufficiently aware of the detrimental consequences due to a lack of information which could be effectively provided by the broadcast media.

In the final section of my testimony, I go into a detailed discussion of the issues concerning the causal relationship between advertising and alcohol consumption and abuse. There are methodological limitations associated with each of the techniques that have been used to study alcohol advertising, and additional research is necessary to more definitively measure the impact of alcohol advertising.

But I think it is clear that advertising is one of many contributing factors that affect drinking practices, rather than serving as the sole causal agent in directly producing straightforward behavioral responses. There are some instances where particular advertisements do cause behavior in a direct, immediate, and obvious manner, but the more significant and long-lasting impact can be traced to the contribution of advertising to the gradual formation and change of beliefs and attitudes that fundamentally predispose people to drink various quantities of alcohol in various situations.

[The prepared statement of Mr. Atkin follows:]

STATEMENT OF CHARLES K. ATKIN (PROFESSOR, DEPARTMENTS OF COMMUNICATION AND TELECOMMUNICATION, MICHIGAN STATE UNIVERSITY) BEFORE SUBCOMMITTEE ON TELECOMMUNICATIONS, CONSUMER PROTECTION AND FINANCE, U.S. HOUSE OF REPRESENTATIVES, MAY 21, 1985.

My name is Charles Atkin, and I am a mass media researcher specializing in the scientific analysis of how television messages influence audiences, particularly young viewers. I have conducted the most comprehensive investigation of the content and effects of alcohol advertising, sponsored by the Bureau of Alcohol, Tobacco, and Firearms and three other federal agencies (Federal Trade Commission, National Institute on Alcohol Abuse and Alcoholism, and the Department of Transportation). I have also reviewed available studies published by other researchers in this country and abroad examining the subject of alcohol advertising.

Based on my assessment of the existing body of research, I believe that there is sufficient evidence to establish that there is a connection between alcohol advertising and the public's alcohol attitudes and consumption patterns. I would like to briefly present five key findings regarding advertising effects:

1. Research shows that advertising influences the brand awareness and preferences of current dirnkers to a significant degree.
2. Several studies indicate that advertising also has a broader impact in significantly increasing the absolute volume of alcohol consumption, regardless of brand.
3. Advertising contributes to the development of positive images of drinkers and favorable attitudes toward drinking as an acceptable, rewarding, and attractive practice.
4. Advertising's influence on alcohol abuse (excessive, hazardous, and problem drinking behaviors) appears to occur to a limited degree.

In particular, there is a positive association between exposure to alcohol advertising and drunk driving, primarily because advertising stimulates the amount of drinking, which indirectly results in a greater likelihood of driving after excessive consumption.

5. Regarding teenagers, the research indicates that the typical underage adolescent is exposed to nearly one thousand beer, wine, and liquor ads in the mass media each year; that advertising has an important impact on liquor consumption and a modest impact on beer drinking; and that even among youth who are not yet drinkers, ads seem to increase the intention to drink in the future by creating a positive predisposition toward alcohol.

It should be noted that the research producing these findings has been conducted with all types of alcohol in several different media. The basic points are fairly well supported with respect to televised beer advertising, but the evidence is far less clear regarding wine advertising or radio advertising.

One of the primary reasons why alcohol advertising is effective pertains to the nature of the content presented in the messages. Beer and wine commercials clearly place consumption in a positive light by glamorizing drinking through lifestyle portrayals of the social and psychological benefits of alcohol consumption. Content analysis studies demonstrate that several themes and appeals are widespread: social camaraderie, masculinity, escape, femininity, and attractive characters appearing with the product. Somewhat less frequent are associations between alcohol and elegance, romance, and adventure, while fewer ads emphasize social acceptance, sexuality, social esteem, and success. The negative side of drinking is almost never depicted.

I believe that several policy implications can be drawn from this set of evidence and from general mass communication effects research. In order to alleviate problematic consequences of alcohol advertising, I suggest that the most promising approach would combine restrictions on advertising content and intensified educational campaigns to discourage misuse of alcohol.

Specifically, I recommend regulation of certain forms of lifestyle portrayals that glamorize the practice of drinking by linking alcohol to rewarding psychological and social outcomes (especially when portrayed by attractive, youthful, or famous characters serving as role models). These appeals appear to promote pro-drinking attitudes and greater consumption levels, but are not essential to the brand-shifting goals of advertisers. The market share impact could still be accomplished with other types of content which promote the brand imagery rather than the generic behavior of drinking. For example, ads could feature distinctive brand symbols and consumer information about substantive product qualities, which would be less likely to have undesirable side effects such as youth drinking, drunk driving, and excessive consumption. These problem behaviors can be directly addressed via more extensive dissemination of public service messages and counter advertising, which should be accorded more prominent placement in order to reach larger audiences.

Broadcasters and the alcoholic beverage industry have displayed substantial progress with their voluntary efforts in disseminating public service messages over the past few months, particularly drunk driving campaigns; this trend should be accelerated. However, there is little indication that these groups are voluntarily striving to provide messages that present opposing viewpoints regarding the negative side of alcohol consumption which would counteract the portrayals presented in ads, nor has there been meaningful self-regulation of advertising content. Thus, I believe that it is necessary for policy-makers to mandate the presentation of opposing viewpoints and to institute restrictions on the content of ads permitted to be broadcast.

The basis for the mandating of counter advertising is the Fairness Doctrine, which should be applied in this case for several reasons. First, alcohol advertising influences young audiences below the legal age for consuming the product. Second, the lifestyle themes portray only one side of the consequences of drinking, without disclosing the detrimental consequences that might occur (particularly in the domains of health, safety, job performance, and social behavior). However, this second reason is less than fully compelling in the absence of definitive evidence that the advertising clearly produces the misuse of alcohol that results in these problems. Third, the public is not sufficiently aware of the detrimental consequences due to a lack of information that could be effectively provided by the broadcast media.

The application of the Fairness Doctrine to alcohol advertising raises the question of where the line should be drawn in applying the Doctrine to other products that are advertised in the broadcast media. I believe that only a limited number of products should be subjected to this policy: smokeles tobacco, proprietary medicine, highly sweetened foods, and dangerous toys. In each case, vulnerable audiences of young people are widely exposed to ads that promote the positive consequences of consuming a product that can have detrimental health consequences which are not well understood by youthful consumers of the product.

The imposition of content restrictions on advertisements raises questions about the economic implications for advertisers and broadcasters. Whereas a total ban would severely diminish the ability of the alcohol industry to introduce new product lines, reinforce brand loyalties, and persuade drinkers to shift from one brand to another, the recommended lifestyle regulation would have a minimal impact on these objectives. Whereas a ban would substantially reduce broadcaster revenues and probably result in fewer program offerings in predominantly alcohol-sponsored programming categories such as sports, the recommended lifestyle regulation would have minimal impact on revenues and program offerings; however, mandat'd counter advertising may indirectly produce these outcomes to the extent that alcohol advertisers withdraw commercials in order to reduce the rate of mandated message placement, and to the extent that broadcasters have to replace paid commercial time with free counter messages.

In the final section of this testimony, I will address in detail the issues concerning the causal relationship between advertising and alcohol consumption and abuse. As with all social science research on mass media effects, there are methodological limitations associated with each of the techniques that have been used to study the impact of alcohol advertising (econometric studies and quasi-experiments, experiments, self-reported effects studies, correlational surveys, along with content analyses). Additional research is necessary to more definitively measure the impact of alcohol advertising, since relatively few investigations have been conducted to date and there are some inconsistencies in findings across various studies. In particular, it is difficult to isolate the causal role of advertising in a definitive fashion because of ambiguities of the available methods and complexities of the advertising influence process.

The input from advertising operates in the context of other cultural forces, interpersonal influences, competing and reinforcing messages in the media environment, and psychological predispositions of audience members. Advertising exerts a subtle and cumulative effect that may not be manifested in simple stimulus-response sequences leading to short-run changes in overt behavior. Advertising is one of many contributing factors that affect drinking practices, rather than serving as the sole causal agent in directly producing straightforward behavioral responses. For example, ads may create mental images of flattering characteristics of the typical beer drinker, or define a large variety of occasions when drinking is considered to be appropriate, or reshape perceptions of the social acceptability of consuming large quantities of alcohol, or remind drinkers of the satisfactions that they obtain from drinking. In combination with other influences such as social pressures or personal values, these effects of advertising may eventually result in a greater likelihood of consumption or misuse.

Nevertheless, there are some instances where particular advertisements do "cause" behavior in a direct, immediate, and obvious manner. For example, a teenager might be tempted to experiment with drinking after seeing ads that portray an especially glamorous depiction of alcohol use in a social setting, or an adult may be prompted to go to the refrigerator for a drink after seeing an ad for a favorite brand, or a heavy drinker might derive the justification for consuming an excessive number of drinks after seeing ads depicting the acceptability of excessive drinking. Such cases do not account for a large proportion of advertising effects, however. Instead, the more significant and long-lasting impact can be traced to the contribution of advertising to the formation and change of beliefs and attitudes that fundamentally predispose people to drink various quantities of alcohol in various situations.

As indicated earlier, advertising is only one of many causal factors that may stimulate alcohol use and misuse. Clearly, the rate of consumption and alcohol problems vary according to family upbringing, peer pressures, demographic characteristics, personality, lifestyles, legal restrictions, price of alcohol, and exposure to other media messages such as TV programs that favorably depict drinking or public service messages that warn against abuse. For teenagers, the evidence indicates that the social norms constitute a primary influence outweighing the impact of advertising; those whose peers encourage them to drink tend to consume the most alcohol. The apparent preeminence of peer influence should not overshadow the important role of of advertising, however. Not only does advertising contribute to intrapersonal predispositions toward drinking, but the advertising effects have implications at the interpersonal level as well because (a) ads cultivate a more accepting attitude toward drinking such that an individual will have a more receptive inclination to follow rather than resist peer pressure, and (b) ads liberalize the social climate of approval for drinking, such that a pro-drinking norm is perceived and interpersonal persuasion to drink is more prevalent.

These other determinants of drinking may also serve to obscure the causal contribution of advertising. For example, trends over time show that sharply increasing expenditures for advertising in the 1970's were not accompanied by correspondingly large increases in consumption, and that more recent increases in spending have resulted in flat consumption rates. Nevertheless, it can be argued that without the impact of advertising on consumption, the level of drinking would have been flatter in the 1970's and declining in the 1980's due to the operation of other influences such as smaller numbers of young adults, increased health consciousness, more restrictive drinking laws, drunk driving crackdowns and concerns, increased cost of alcohol, greater popularity of soft drinks, improved public service campaigns, and shifts toward more conservative values in society during the 1980's.

The final causal issue involves drawing inferences from correlational data, such as the finding in my own investigation that amount of exposure to beer advertising is positively correlated with amount of beer consumption among teenagers. In static survey designs, caution must be exercised in interpreting a positive correlation because of possible spuriousness and reverse causal influence. An apparent association between ad exposure and drinking may be explained by common antecedent variables; in order to guard against this possibility, I controlled for a large number of potentially contaminating variables such as sex, church attendance, social encouragement, and exposure to other drinking-related media content. The relationship remained significant after adjustment for these spurious influences. On the question of causal ordering, it could be argued that beer drinking habits motivate a teenager to be exposed to ads, rather than ads stimulating consumption. Several considerations suggest that advertising is the more active force. First, of the two variables, exposure is more likely to be the antecedent one in the life cycle of the adolescent; most young people will see numerous ads before the time that they experiment with alcohol or become regular drinkers. Second, exposure to advertising is seldom a highly motivated form of selective information seeking; people are often indiscriminantly exposed to whatever ads they encounter while watching TV programs, and the entertaining style of the advertising may attract more attention than the substantive nature of the product. Third, the predispositions of those adolescents who have not yet started drinking seem to be affected by advertising; many more of the highly exposed non-drinkers express an intention to drink in the future, compared to less-exposed non-drinkers. Since they have not yet performed the behavior presumed to motivate selective exposure, the reverse causal sequence is a less plausible explanation for the correlation.

It should be pointed out that the evidence discussed in this testimony primarily applies to alcohol attitudes and consumption patterns, rather than alcohol abuse. To date, only a handful of investigations have focused on the impact of alcohol advertising on abuse, and the findings are not conclusive. There is a need for more extensive research on this topic. Additional research is also needed to precisely document the degree to which advertising influences various attitudes and behaviors in different subgroups of the population, and to specify the types of advertising content that have problematic effects (e.g., youthful characters, celebrities, sociability scenes, escape themes, sexuality portrayals, and the implication of excessive consumption in commercials); while there are indications that certain content features produce attitudinal or behavioral effects, regulatory decisions should be guided by more definitive evidence concerning which aspects of the advertising portrayals merit priority attention. Finally, research would be helpful in identifying whether the inclusion of warning disclaimers or "drink in moderation" recommendations serve to modify the impact of ads, and in determining which types of public service or counter advertising message strategies can minimize the problematic consequences of alcohol commercials.

Mr. LUKEN. Thank you very much, Dr. Atkin.

And now we will ask Dr. Donald Strickland, Assistant Professor, Department of Sociology, Washington University in St. Louis, MO.

We have your testimony, I believe, and it will, without objection, be admitted into the record, and you may proceed.

STATEMENT OF DONALD E. STRICKLAND

Mr. STRICKLAND. My name is Donald Strickland and I am assistant director of the Social Science Institute at Washington University in St. Louis.

I would first like to thank the subcommittee for inviting me to appear before you on such an important issue. Since for the past 7 years I have been conducting research on alcohol advertising and have written over 25 articles on the topic which have been published in scientific journals and books or presented at scientific meetings, the issue before you today is of deep professional and personal interest to me.

In today's hearing I will confine my remarks to the scientific work on the relationship between alcohol advertising and alcohol consumption and abuse. While I recognize the larger scope of the issues under consideration today, my academic experience and expertise do not extend to these other areas such as the fairness doctrine, the effects of legislation on the broadcast or alcohol industries or the like, nor do I consider these paramount concerns from my perspective, which focuses on attempts to reduce the tragic consequences of alcohol misuse.

Over the past few years, a substantial body of research has emerged in three areas concerning the impact of alcohol advertising on alcohol consumption, and to a lesser extent, on alcohol misuse, the more central issue for those of us concerned with alcohol problems.

First have been economic analyses of the effects of alcohol advertising expenditures on aggregate or per capita consumption. With some few exceptions, this research, which by now numbers over 20 studies, has found either no effects of advertising on overall consumption or effects which have been uniformly small.

A recent independent review of these kinds of studies by the Federal Trade Commission reached similar conclusions.

Second, a smaller body of evidence has developed out of attempts to examine the impact of actual bans on alcohol advertising in some areas. Those studies which have examined specifically the results of advertising bans have consistently found no effect of the bans on consumption nor on alcohol abuse.

Third, there have been almost 20 articles reported in the scientific literature on the relationship between individual exposure to alcohol beverage advertising and individual consumption and alcohol misuse. In the vast majority of those studies in which behaviors such as alcohol consumption, frequency of intoxication, psychological dependence on alcohol, and negative consequences of alcohol misuse were assessed, little or no impact of advertising was found.

In studies which have assessed brand awareness, images of drinking, knowledge of alcohol, advertising recall and the like, these were often found related to alcohol advertising. These outcomes are only indirectly, if at all, linked to consumption or to problem drinking, and are entirely consistent with the processes by which alcohol advertising affects brand loyalty, brand preferences and, ultimately market shares within a highly competitive industry.

Further, such findings are no substitute for the more direct evidence from studies of alcohol use and alcohol misuse.

My own research on the impact of alcohol advertising on drinking among teenagers would also support these larger conclusions. Indeed, a recent paper on alcohol problems of young people written by a World Health Organization scientists draws on my work and other North American studies to conclude that "Advertising is unlikely to recruit drinkers directly from those young people who are nondrinkers," and "that changes in advertising alone would have very little impact on young people's drinking."

The overwhelming fact emerging from the research on the effects of alcohol advertising is that such advertising has little or no impact on those very things which should be our central concern, namely, abusive use of alcohol and the misuse of alcohol.

As researchers in this field know all too well, establishing the effects of alcohol advertising poses a number of serious practical and technical research problems. No one study will ever be without fault, and no one study is likely to answer the major questions with complete certainty; yet this situation is no different than in other areas of behavioral research, in which the strength of the evidence is based on the cumulative findings from many studies.

The preponderance of the evidence from these studies of the effects of alcohol advertising on the abuse and misuse of alcohol has a quite straightforward implication: banning or restricting alcohol advertising is likely to have virtually no impact on the tragic personal and social consequences of alcohol abuse, and while alcohol advertising is a highly visible and controversial target, subject to rather straightforward controls, such controls are likely to prove a cruel deception in our struggle against alcohol abuse and alcohol problems.

Let me once again thank the subcommittee members for inviting me to share these views with you today and for your efforts directed at developing policies that have a rational scientific basis in order to effectively achieve our common goal of reducing alcohol problems.

Thank you again.

[The prepared statement of Mr. Strickland follows:]

A COMPREHENSIVE BIBLIOGRAPHY OF SCIENTIFIC STUDIES ON THE EMPIRICAL EFFECTS OF ALCOHOL BEVERAGE ADVERTISING

Submitted to the
U.S. House of Representatives
Subcommittee on Telecommunications,
Consumer Protection and Finance
of the
Committee on Energy and Commerce

by

Donald E. Strickland, Ph.D.
Social Science Institute
and
Department of Sociology
Washington University

MAY 17, 1985

I. EVALUATING RESEARCH ON THE EFFECTS OF ALCOHOL ADVERTISING

Scientific Credibility: As a precis to the bibliography which follows, I would like to discuss some of the issues involved in evaluating the empirical research. The issues surrounding alcohol advertising are indeed complex and, in many ways, elude attempts at definitive scientific conclusions. Nonetheless, rational dialogue over the role of alcohol beverage advertising in the creation and maintenance of alcohol problems, and related policy options, are not helped by the moral biases of personal opinion nor by sloppy and deliberately biased pseudo-scientific research in the area. Clearly, the need exists for additional scientific research which informs these debates; the strength of deeply held convictions, on either side of the issue, is no substitute for evidence, nor is it a rational basis on which to anchor effective prevention policy. Objective evaluation of the existing empirical evidence will assist policymakers in drawing their own conclusions about the state of the evidence. Since the emotionalism surrounding the present debates has produced name-calling, skepticism, and charges of vested interests by many of the participants on all sides of the issues, an ojective review of the empirical evidence by the Subcommittee whose mandate is to independently establish the facts would be most welcomed.

(2) Aspects of Advertising: Any reasonable dialogue over the issues of advertising and alcohol misuse must be clear on just which aspects of advertising are involved. Too often these distinctions become blurred in the intensity of the discussions. As a result, global policy recommendations are linked to desired outcomes with little consideration of the dynamics involved. At a minimum, current policy options must distinguish between four distinct sets of research concerns:

(i) The content of alcohol beverage advertising: While this is the most often studied aspect of alcohol advertising, it is clearly unwarranted to infer the impact of alcohol advertising from its content. Such "heroic leaps" are no substitute for more direct evidence of advertising effects, no matter how theoretically sound our expectations are.

(ii) The amount of alcohol advertising: Although impressive in the magnitude of number of stimuli, potential ads seen in a variety of media, or industry expenditures on advertising, such research tells us very little about the actual effects of advertising exposure.

(iii) The targeting of alcohol advertising to supposedly susceptible subgroups: Another common strategy is to infer the influence of advertising from the market segmentation strategies of alcohol beverage marketers. Again, such inferences, especially with respect to alcohol misuse are simply no substitute for more direct empirical evidence on alcohol advertising effects.

(iv) The effects of alcohol advertising: Although this should be the key issue in the debate over alcohol advertising, the credible scientific evidence on this point is more often than not ignored in favor of more peripheral and impressionistic research which is open to the heroic leaps of inference. The cumulating direct evidence regarding the impact of alcohol advertising on alcohol consumption and abuse primarily comes from three different research areas and involves scientists in disciplines such as economics, sociology, communications, marketing, alcohol studies, and psychology; involves researchers from a variety of institutional affiliations; and involves research projects with a variety of funding sources: (1) econometric analyses of advertising expenditures and aggregate sales volume in various countries (U.S., Canada, United Kingdom, Australia, The Netherlands, etc.), (2) analyses of the effects of partial or complete advertising bans on per capita consumption levels, and (3) individual-level studies of the effects of actual exposure to alcohol beverage advertising. A general summary of the emerging scientific research on the effects of alcohol advertising, requires emphasizing three important points. First, the findings of these various studies are remarkably consistent, and argue strongly against the belief that alcohol advertising is a major contributor to the use and, more importantly, to the abuse of alcoholic beverages. Second, even under those conditions in which an advertising effect has been found, the magnitude of the effect was substantively trivial compared to other environmental and social influences, even on so direct an outcome as consumption level. Thirdly, it is important to recognize that the few studies which do report an advertising effect on total consumption, of whatever magnitude, are not tantamount to finding effects on problem drinking outcomes. In fact, research which has attempted to distinguish consumption from alcohol abuse outcomes suggests that meager effects on consumption are simply not translated into effects on alcohol problems.

(3) Attitudes, Drinking and Problem Drinking: It is also important to realize that findings concerning individual perceptions, evaluations, or judgments of advertising messages, or individual perceptions of the effects of advertising, are often interpreted as synonymous with consumption behaviors. In all fields of behavioral science, the distinction between attitudes and actual behaviors related to those attitudes is a commonplace. While of interest, studies of such attitudinal components as affect toward ads, believability, brand preference, brand loyalty, advertising recall, attention paid to advertising, intention to purchase, and the like are very imprecisely linked to actual consumption behaviors, especially to excessive consumption which, in my opinion, should be our primary concern. Such findings often both ignore the more direct evidence available on actual consumption behaviors and require a great deal more faith in social science theories than in empirical facts.

(4) Policy Implications: Our reading of the empirical evidence is that reducing the amount of advertising for alcoholic beverages, or banning such advertisements altogether, is likely to have negligible impact on level of consumption, excessive consumption, or outcomes related to the abusive use of alcohol. The bulk of scientifically valid studies fail to sustain the argument that alcohol advertising is a primary factor in drinking behavior, especially problem behaviors related to alcohol abuse. I certainly share the view of a number of alcohol researchers that a preoccupation with alcohol beverage advertising may divert attention from the real problem of alcohol abuse and alcoholism. The results of increased control of alcohol beverage advertising

are likely to be disappointing in the extreme if prevention of alcohol problems is the real goal behind such policy suggestions; there is the very real danger, however, that such action will lull us into a false sense of security that one of America's leading health problems is being dealt with rationally and adequately.

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Mr. LUKEN. Thank you, Dr. Strickland.

While you are on your feet, I wonder if I could begin the questioning here, the discussion.

We have had a lot of testimony on just what the effects of beer and wine advertising are, and you have commented in general on it in your short testimony, and you seem to be saying that beer and wine advertising has no effect whatsoever upon the amount of consumption, the total amount of consumption out there.

Is that what you are saying?

Mr. STRICKLAND. Well, I am saying several things. First, I think that the majority of studies have failed to find an impact on consumption, on overall level of consumption.

Mr. LUKEN. Overall level.

Mr. STRICKLAND. Right.

Mr. LUKEN. We are not talking about individual consumption.

Mr. STRICKLAND. Well, even those individual level studies that have examined individual exposure to ads——

Mr. LUKEN. I mean if I am sitting watching the ball game and they put that beautiful, lovely 30-second commercial with an attractive cool bottle of beer, you think I'm not more likely to drink it than if they didn't put that on there?

Mr. STRICKLAND. I think if you are, Congressman, it is a marginal impact, at best. Some studies, including mine, have found marginal impacts of exposure on consumption, but it is a very small impact on overall consumption.

I would also add a second thing, that those impacts on consumption are very, very small in relationship to other more immediate influences, such as parents drinking, peers, peer group pressures. I will also add that that is not tantamount to saying those ads have an influence on alcohol misuse and alcohol abuse, and that seems to me to be one of the central distinctions that we need to make.

I mentioned nothing in my testimony about impacts that it does have. There is a substantial body of economic marketing literature that shows that it has impact on market shares and brand preference, et cetera, and I don't address that issue in my testimony.

Mr. **LUKEN**. All right.

Ms. Kahn, the PTA has selected the alcohol advertising issue as its number one legislative item on the legislative agenda; is that right?

Ms. **KAHN**. No; that is not correct. We have a series of matters on which we expend legislative efforts. This is certainly one on which we have grave concern and intend to give a great deal of attention.

Mr. **LUKEN**. Would you prefer to see legislation which would ban the advertising?

Ms. **KAHN**. Our preference would be for the kinds of counter messages which would bring what we are seeking, which is a fairness in the information that comes to young people. Our concern, I guess, is that they hear a great deal about the happy side of it; they hear very little on television about what has been referred to earlier as the dark side of it.

I don't know, Congressman, whether you were noticing in the commercials we saw this morning, the PSA's, many of which are splendid, that we were getting mixed messages even there. On the one hand, we got Steve Garvey, who most kids know about, with a party going on behind him saying, "Know when to say when." On the other hand, another PSA used earlier by one of the other people giving testimony showed a young man who had destroyed his car and his best friend in an alcohol-related accident, and his comment on that PSA was "I didn't know that I was drunk. I knew that I was drinking, but I didn't know that I was drunk."

Our concern is that young people, especially, are probably in the least possible position of being able to make that judgment of knowing when to say when. We would like for them, before they start using alcohol as a party lifestyle, to have some idea of what the consequences other than just drunken driving may be in their lives.

Mr. **LUKEN**. It seems to me, though, that you there have put your finger on the problem of any kind of control, any kind of banning or any kind of control, because on the one hand, the one message, "Know when to say when," may be effective for some but it can be criticized as being inconsistent with another message, both of which are intended honestly and, I think, forthrightly, to be anticonsumption of alcohol, certainly antiabuse of alcohol.

Isn't that the problem that we get into in any kind of a ban, that it is difficult to really say what is the appropriate measure to accomplish the negative purpose?

Ms. **KAHN**. I'm sure that there is no one single way. Our feeling, however, is that if young people, in particular, and probably most consumers in general, were exposed to more of the other side of this coin, that they might really have a different attitude about whether drinking is just a fun thing to do.

We are not seeking the kind of simple solution. We don't think there is a simple solution to this. But we are concerned that the messages which are coming across in most of television's advertising at this point is really counterproductive to the efforts of parents and schools to develop responsible attitudes about this other side of the coin.

Mr. LUKEN. OK. Very good.

I would like to ask Mr. Drake a question or two. There has been some discussion about the BATF being engaged in revising and strengthening its alcohol advertising rulings, and we haven't heard from you in this regard here today. Would you discuss that issue, those regulations? Are they being upgraded, updated and strengthened?

Mr. DRAKE. Yes, sir. We have had hearings, as I mentioned in my remarks, concerning the issue of advertising. We did come out with a final decision on certain aspects of advertising, but because of——

Mr. LUKEN. What is it? Would you go into that decision?

Mr. DRAKE. The decisions with those noncontroversial issues, such issues as whether to call something distilled or pure. Really noncontroversial issues. The issue we recognized as being controversial was the athletes in advertising. We have developed a proposed rule——

Mr. LUKEN. Athletes?

Mr. DRAKE. Athletes in advertising of alcoholic beverages. We have developed a proposed rule which raises the issue of whether or not we should deal just with athletes, active athletes, athletic events, or other celebrities. As was pointed out, the celebrity——

Mr. LUKEN. Would you be a little more precise as to what that rule would say?

Mr. DRAKE. Well, the rule right now is under review in the Treasury Department. Until such time as they really pass off on it, it is still just a proposed rule within the organization.

Mr. LUKEN. Well, what might it look like?

Mr. DRAKE. Well, we could raise the question——

Mr. LUKEN. Give us two alternatives.

Mr. DRAKE. Should we take the position that managers, coaches, retired athletes, should they also be prohibited from being in——

Mr. LUKEN. You started out with active athletes are prohibited?

Mr. DRAKE. Active professional, prominent athletes are prohibited. Our position there is that becomes misleading.

Mr. LUKEN. That is not the rule at the present time.

Mr. DRAKE. That is currently the rule at the present time.

Mr. LUKEN. Your rule.

Mr. DRAKE. Yes, sir. That is a revenue ruling that has existed since about 1954.

Mr. LUKEN. All right. So you are now considering adding——

Mr. DRAKE. Expanding that.

Mr. LUKEN [continuing]. Retired athletes.

Mr. DRAKE. Yes, sir.

Mr. LUKEN. Like Billy Martin, for example, who one day is retired and the next day he is active, and he comes in there, doesn't he?

Mr. DRAKE. You have touched right on our problem, will they promise to stay retired. That gets to be our problem. If you work for Steinbrenner, I guess you could promise anything.

Mr. LUKEN. So is there any other way that——

Mr. DRAKE. Well, we also raise the question about celebrities. We are also raising the question about celebrities, not just athletes, because there is a question, does the fact that a successful celebrity advertises a beverage alcohol, does that imply that that success came from drinking? Does that imply that drinking a beverage alcohol would not negatively impair the success? So we are raising those kind of questions for a proposed rule.

Mr. LUKEN. Well, much of your authority overlaps with the FTC in this area, doesn't it?

Mr. DRAKE. Not so much overlaps as much as it is shared. The Federal Alcohol Administration Act, I think, is one of the primary laws that deal with beverage alcohol advertising. The FTC, of course, does have a related responsibility. We work very closely with them.

Mr. LUKEN. Of course, the FTC couldn't very well prohibit athletes, though, could it.

Mr. DRAKE. Well, I will defer to them on that.

Mr. LUKEN. They would be—well, neither one of us are speaking technically as experts, but they would be limited to deceptive and unfair, whereas you have the more general injunction that would give you the authority, apparently, in this case.

Mr. DRAKE. We also have a quicker solution to an ad in the sense that we can take an action against the industry member who sponsored that ad. We can suspend the permit, basically put them out of operation for a period of time. That is a very strong penalty. It gets their attention very rapidly.

Mr. LUKEN. When would those regulations possibly come to fruition?

Mr. DRAKE. That is what I'm not sure about. They still are in review in the Treasury Department, and I don't know when they will come back.

Mr. LUKEN. OK. I think I will yield to my friend from Utah.

Mr. NIELSON. On this point would the chairman yield?

Mr. LUKEN. I will yield to you for such time as you may want to consume.

Mr. NIELSON. I was going to refer to your particular question. Rule 54, 513, has reference to the illustration of prominent athletes consuming or preparing to consume the advertised malt beverage are considered likely to mislead the public and are therefore subject to regulation. That doesn't say current athletes. It just says prominent athletes.

Mr. DRAKE. We have taken that to mean current professional athletes, is what we have enforced all the years.

Mr. NIELSON. You don't say prominent athletes any more.

Mr. DRAKE. I did in my opening remarks and we still do, but we also deal with professional. At the time that was written, of course, the fact of an amateur athlete advertising the beverage alcohol product wasn't really considered. It has become now, of course, in recent years, and that is why we have expanded that to be prominent professional athletes, active athletes.

Mr. **Nielson**. Mr. Chairman, I have a number of questions.

Dr. Atkin and Dr. Strickland are both professors and both ones who have done surveys and both who have made comments, and their comments are 180 degrees apart.

Dr. Atkin, for you the study done for the Bureau of Alcohol, Tobacco and Firearms is convincing. You indicate in several places several things that you have come up with, namely, that research shows advertising influenced the brand awareness and preference of current drinkers to a significant degree, and advertising has a broad impact on significantly increasing absolute volume of alcohol consumption, for example.

What about Dr. Strickland's comment that no one study can prove these kinds of things? Do you concur with what he said?

Mr. **Atkin**. My conclusions here are based upon my reading of the entire literature, studies done by myself and all the other people who have investigated this area. I agree with him that a single study is not going to demonstrate conclusively whether there is an effect or whether there is not an effect. I also agree that it's very easy to find methodological deficiencies in any single study. So that is why it is important to continue investigating the area, and I would support your proposal to do a thorough study and to commission more research to definitively provide answers as to the degree of effect.

We are basically arguing about whether it is a small effect or a modest effect or a medium effect, and the question is how big is big enough? And to do that, you need a greater amount of research to finally examine that issue.

Mr. **Nielson**. Dr. Strickland, I am a professor of statistics, or was for 25 years, so let me ask a couple of technical questions now. One, in your statement you said there is no significant effect of advertising on consumption. That was your statement. On questioning by the chairman, he asked, is there an effect? You said, oh, it's just a marginal, small impact. Which is correct?

Mr. **Strickland**. I think you will see my statement says little or no impact, sir.

Mr. **Nielson**. Are you willing to say there was no significant impact?

Mr. **Strickland**. I reviewed some 20 econometric studies——

Mr. **Nielson**. I am going to give you two choices: either there is no significant impact or that the impact is too small to worry about. Which of those two subscribes to your general comment?

Mr. **Strickland**. It depends on which of the studies you are talking about, and that is why——

Mr. **Nielson**. You made some broad generalizations on 20 studies. Would you——

Mr. **Strickland**. On those 20 econometric studies, I think I concluded that the research has found "either no effects or effects which have been uniformly small." Of those 20 econometric studies—as you well know, differing in design, differing in data bases, differing in a variety of analytic techniques—the vast majority of the studies either found no effect or, when they found an effect, it was a relatively small effect.

I think Dr. Atkin is right that part of our disagreement has to do with the magnitude of effects when they are found, the relevance of some effects. I think that often we cast very different nets with respect to what is considered relevant evidence. I tried to focus directly on those studies that looked at behavioral impacts. As he and I have both said before, we sometimes have different emphases. I tend to look more at the behavioral aspects, the alcohol abuse measures, and——

Mr. NIELSON. Excuse me for interrupting. You have written 25 articles on this subject, so your views are quite well known. Let me ask you one question.

Mr. STRICKLAND. Surely.

Mr. NIELSON. Could you design a study which would tell whether the effects were there and whether they were significant or not? Do you think you could design something in the difficult subject matter we are dealing with?

Mr. STRICKLAND. I think you could design it, Congressman; I don't think you could carry it out.

Mr. NIELSON. There is no point in designing it if you can't carry it out.

Mr. STRICKLAND. I think that is quite right, sir.

Mr. NIELSON. In other words, you claim that right now, because of the subject matter and because there isn't enough time, we can't choose the people correctly and so forth, there is no way to get a scientific study right now.

Mr. STRICKLAND. No, no. I didn't say that. I think there is a way to get scientific studies. We have several of them. Whether we can design and carry out a study that will definitively answer the question is, I think, very doubtful.

Mr. NIELSON. Do you think the Surgeon General really proved significantly that tobacco is harmful, cigarettes? Do you think he proved without a shadow of a doubt?

Mr. STRICKLAND. I think his research and the research that was done outside of the Government agencies accumulated in a fashion that was compelling. The evidence was very compelling from study after study after study.

Mr. NIELSON. And as the evidence mounted up, then we finally took some action; is that what you are saying?

Mr. STRICKLAND. I think that was part of the response, yes.

Mr. NIELSON. What about Mrs. Kahn's comment that said that we shouldn't show ads implying there is a reward for doing a good job, after you have worked very hard on the crane or whatever, then you now deserve a relaxing drink, or if you have played an especially good game of volley ball on the beach, you deserve a beer afterward?

Do you think that gives you the idea of a reward?

Mr. STRICKLAND. Well, I think researchers on this topic have very different views on that. Whether the product is associated with good times or whether, indeed, it is promising those good times is something that current methodologies in research are unable to determine.

Mr. NIELSON. What about the phrase in that ad about the volleyball game: would teams ever go at it so hard—or a soccer game, I guess it was—this hard, if it weren't for this lovely beer they are going to have? Isn't that somewhat enticing?

Mr. STRICKLAND. Well, it may be. I think, though, that in the absence of research that has demonstrated effects of that advertising, what we may be asking is does this advertising portray the product in a positive light, and that may be begging the question.

Mr. NIELSON. But doesn't it portray in that particular ad as a reward, as a nice relaxation after a hard game and you are playing especially hard because you are getting this particular brand of beer? Doesn't it do that?

Mr. STRICKLAND. I think there are many ways to interpret that one particular ad out of all the ads that——

Mr. NIELSON. Oh, there are a lot of them like that.

Mrs. Kahn, would you like to comment on that?

Ms. KAHN. Yes, I would. If that indeed is not what happens, then I think all of the enormous funds that are being spent on advertising are being misspent because that certainly is the intent. I would be very interested in following up on the suggestion of Mr. Banzhaf of getting the material on what is the intent of those people who design the ads.

I don't think we can really say that with certainty now, whether or not these ads are intended to develop consumption, whether they are intended to appeal to young people, whether they are intended to just get people to switch brands. I really don't think we do have the data to determine what that intent is, and I think that intent would be very important.

It would be my guess, not as a scientist but as someone who has worked with children for 26 years, has served on the 10th largest school board in the country for 12 of those years, that we would find that young people are influenced indeed by that kind of a life style. Particularly for young people who have problems in other ways, that is the kind of approach that works well with them.

If you had had on this panel a pediatrician and a school counselor rather than simply the people who are in the industry, I think you would have gotten a very different view of how young people are reacting to the kinds of ads that we see on television and radio.

Mr. NIELSON. Let me probe that question with Mr. Land. You are the president of Independent Television. You made a comment that we would not have the sporting events that we have now if it weren't for the beer ads, basically. Who watches those sporting events? Is it strictly those over 21? That was implied by an earlier witness.

Mr. LAND. That seems to be largely the case. The last information we have would support that. By and large, yes. Sports are basically an adult program viewing choice.

Mr. NIELSON. And yet the lady says that everybody knows Steve Garvey. How would they know Steve Garvey if they hadn't been watching television?

Mr. LAND. Well, I guess they know. What I am saying is that when you ask the question whom is it aimed at, the sports program is aimed at adults. We know children watch a lot of television.

Mr. **Nielson**. I guess I was different from some. I have been a sports addict ever since I was 6 or 7 years of age. I can give you the batting averages in 1933 if you want them.

Mr. **Land**. No, I don't.

Mr. **Nielson**. I guess I'm different from some, but most of my youngsters watched those programs, at all ages, and we just have to ignore——

Mr. **Land**. I'm not denying that. Children watch everything on television.

Mr. **Nielson**. So the argument that these are appropriate and proper ads because they are aimed mainly at adults doesn't wash then, does it?

Mr. **Land**. Here is the problem you get into when you start on that track. You have a medium which is universal. It reaches across the family. Children watch at virtually all times, and they watch things they are not supposed to watch. We know that. Everybody knows it. But every advertiser is faced with that problem. Every advertiser. Not just those who advertise beer and wine.

As a matter of fact, we know from our own experience dealing with advertisers and advertising agencies that most beer companies and wine companies make a special effort to limit the advertising to programs with a minimum complement of children, and they set a measure. If it is 40 or 50 percent, they don't want to advertise on those programs. We know that because during the Monday through Friday period, Independent Television provides the major children's service in this country, so we run into that all the time.

So it is an attempt, in other words, on the part of advertisers to do a balanced job of advertising, taking into account their main target audience.

Mr. **Nielson**. Mr. Chairman, do I have time for one more question?

Mr. **Wirth**. Yes.

We are going to break all precedent and leave Mr. Nielson in charge, so everybody keep an eye on him, will you, please?

Mr. **Nielson**. That happens to the minority only rarely.

Mr. Drake, my bill calls for a study to be handled through your organization, the Bureau of Alcohol, Tobacco and Firearms. Does that give you any problem? Would you be willing to take the lead if that bill were to pass?

Mr. **Drake**. For the agency, yes. The Treasury Department has not, to my knowledge, had a chance to review that or set upon——

Mr. **Nielson**. I'm not asking whether you support the bill or not. I'm just saying would you be willing and able as an agency to handle it if such a bill were to pass.

Mr. **Drake**. Yes, we would. Of course, there would be a resource concern.

Mr. **Nielson**. Let me ask this question. Would you, from your viewpoint, having to do regulating, would you think it is better to get all the facts before we dive off into any one direction, or do you feel that we should decide to ban or not ban, right now, counter ads or no counter ads, right now. Is there some advantage, I am saying, of——

Mr. **Drake**. Obviously, I think there is an advantage to having facts before you make a decision.

Mr. **Nielson**. What about Mr. Strickland's comment that you can't possibly make a study that will give you the facts? Do you agree with that?

Mr. **Drake**. I'm not a social scientist so I really can't pass on that one. I don't know.

Mr. **Nielson**. How about Dr. Atkin. What do you think?

Mr. **Atkin**. I think that one single investigation would not be sufficient to prove the case, since you must approach it from a variety of different methods. You mentioned earlier the Surgeon General. Back in the late 1960's there was a major question about whether television violence influenced teenagers, and what he did was to commission about 30 investigations from people using experimental techniques, survey techniques, a variety of different approaches; and gradually there came to be a consensus as that evidence accumulated.

So I think a 1-year or 2-year crash study of that nature would probably not provide an answer that would be close to definitive.

Mr. **Nielson**. Are you aware that my proposed bill does ask for public comment and a review of the current literature, as well?

Mr. **Atkin**. Yes.

Mr. **Nielson**. And I certainly would want to use you and Dr. Strickland because you have looked at a lot of them over the years.

I guess I'm supposed to keep going until Mr. Wirth returns, so let me ask Mr. Bell something.

The American Advertising Federation, what do you think the aim is on these ads? Some have said earlier that they are just to change the percentage, to convert from one brand to another. Others have said they are to increase consumption. What is your view?

Mr. **Bell**. Well, the generally accepted marketing strategy within the beer and wine industry tends to relate to brand choice, primarily, and that is a major battle that goes on in that industry. It is a highly competitive industry. The targeting of those consumers, mature consumers who are customers for those products, obviously the prime consideration of the competition is to attract more of the share of that existing market.

So that is the primary purpose. In fact, it has been suggested that a market share change of 1 percent could result in hundreds of millions of dollars of difference in revenue for competitors, so brand share is a primary objective. That is not to suggest that increasing consumption among potential customers is not an objective, although it doesn't seem to be the primary marketing objective in a mature market for a mature product, which is what we are talking about here with beer and wine.

They are targeting at the mature audience, and it turns out that that is a much older audience than even some had suspected, as a lot of research suggests that the people watching, as has been discussed here, that the people watching the baseball games and the sporting events are generally not the young people.

But it doesn't matter. They are not targeting at those young people anyway. But I do think there is some increase in consumption that results from the advertising, but it is among the group that they are targeting who might be potential users of the product; and if you are not a potential user of a product, no amount of advertising, however effective, is going to force you to use that product or do something that you don't want to do.

Advertising is often attributed with characteristics that it doesn't have, that it can force people to buy things or do things that they don't want to do against their will. That is simply not the case. The customer for a given product is one who is in the market for that product, and they are targeting those people specifically, and of course, they are not targeting the young people.

Mr. **Nielson**. Let me pick on Dr. Strickland one more time.

You claim there is no overall relationship between exposures to and impact of alcohol ads, but you did have some research where you subdivided your population, and you found that among youth who related to the athletes they were watching, there was a significant impact. Would you explain that?

Mr. **Strickland**. Sure. In one of the analyses that I did, which I later published in one of the journals, I looked at a group of individuals who had scores on a particular orientation scale that said they had a particular orientation toward advertising. That is, they highly identified with what was portrayed, what was going on, and in fact, sort of lived vicariously through that. And indeed, amongst that group, I did find an effect of exposure on consumption.

The magnitude of that effect was very small. When I further investigated whether that effect further translated into abusive behaviors, the sorts of behaviors like frequency of intoxication, et cetera, that I examined in my work, I found absolutely no effect on those abusive behaviors.

So yes, in that one case, which is amply described in one of the articles I wrote, I did find an impact on consumption, marginal impact, small impact.

Mr. **Nielson**. Mrs. Kahn, would you like to comment on that same question? Then I will return it to the rightful chairman.

Ms. **Kahn**. I think our point of view has not been necessarily whether one side of this or the other side of it is really proven in the research. I think over the years we certainly know that the research data on all of this is going to be ambivalent, and more research data will probably continue to be ambivalent, depending on how the questions are asked and who asks them.

Our concern is that all of this discussion has really somewhat ignored the young people that are caught up in this, the 3 million young people who are at risk because of what is happening in their lives as the result of use or abuse of alcohol. I don't think that the research data needs to surpass common sense in understanding that the inclination to drink for problem drinkers is always there, and the lack of information on the television except in the one regard of drinking and driving is simply abysmal.

Those young people do not have access to all of the other kinds of things that happen that affect their lives as a result of this. So really our request is not for additional research but for the additional responsibility on the part of everyone in this to begin to effect some balance, some fairness on television where young people are seeing right now a very unbalanced picture of what the results of drinking may do.

Mr. **Nielson**. Mr. Bell.

Mr. **Bell**. May I comment on that?

Mr. **Nielson**. If the chairman will allow it.

Mr. **Bell**. Thank you.

Mr. Chairman, I just want to point out that, first of all, I think there is a tremendous amount of information available in our society today about the dangers of drinking and driving and alcohol abuse and the misuse of this and other products, and I think it is wrong to suggest that their only exposure to information about society is in product advertising or programming on television.

There are all kinds of influences in our society, and I think we are, including young people, today a better-informed society than ever before in history because of modern technology.

I would also say that when you talk about the influences here, I think we can't overlook the fact that there are all kinds of other influences on the young people today, and they are well informed on the dangers of these products from their peers, from what they observe within the society as they look around—and they are not blind to what they see—particularly they are influenced by their own homes and by their school systems.

I think the Parent Teachers Association has a wonderful opportunity, and we applaud their efforts to help improve the educational process in this country and promote awareness among young people, and I know that the broadcasters and advertising industry would like to work with them to do that, and we are doing that. The point is there is a lot of information available now, so to suggest that we need more remedies and more Government action because young people don't know the dangers of alcohol or drug abuse is, I think, incorrect.

Mr. **Wirth**. We could work with you, if we could.

Excuse me. If the gentleman would yield.

Mr. **Nielson**. Mr. Chairman, I would like to suggest I have two statements here in my packet that I haven't heard any representatives from, and I would like to ask unanimous consent to have the Freedom of Expression Foundation testimony of Craig R. Smith, and the Public Communications, director of the Church of Jesus Christ Latter-day Saints, entered into the record.

Mr. **Wirth**. Without objection, it will be included in the record at the appropriate point.

Mr. Bell, we could work with you on that. As you heard from the earlier panel—I think you were here for that—there was a lot of discussion about cause and effect and what you all know about what works and what doesn't work in advertisements. We could work with you in this regard.

Mr. **Bell**. We would like very much to cooperate in every way we can.

Mr. **Wirth**. Thank you.

It seems to me, going back, Mr. Drake, and this is not a question for you but rather a comment on the whole process going on in the administration: It is my understanding that one of the basic goals that we should be pursuing is the goal of the public health. I don't think that there is much disagreement with that, and one designs various Government programs to get from here to there, and regulation or deregulation is a means to an end and not an end in itself. Yet we see this administration, with a lot of pious claims about its concerns about the abuse of various drugs and alcohol and so on, pulling back what it was doing at the Department of the Treasury, at BATF, because they say the goal is deregulation.

I don't think the goal is deregulation; the goal is the public health in some way. And once again, to talk in this simplistic fashion—I'm not taking that out on you, Mr. Drake, it is not your policy, and I recognize that—I hope it is not, anyway—it just seems to me that there are broader public policy goals and that regulation or deregulation is a means to an end and not an end in itself.

Mr. **Drake**. I am glad that wasn't a question, Mr. Chairman.

Mr. **Wirth**. I don't think that would have been fair. I recognize that.

Let me ask you, Mr. Bell—going back to the advertisers for a minute—do you agree with what was suggested earlier, that the smoking problem is bigger than alcoholism, in terms of a health problem?

Mr. **Bell**. I think there is a distinction between the smoking question and alcoholism.

Mr. **Wirth**. I'm not making that distinction. Just in terms of numbers of people. Let's put it that way. The numbers of people who die from lung cancer are significantly larger than the numbers of people who die from alcoholism.

Mr. **Bell**. That is my understanding, yes.

Mr. **Wirth**. And it is like 500,000 people a year die from lung cancer, and 100,000 people a year die from alcoholism. Are those generally those figures?

Mr. **Bell**. That is what I have heard. I'm not a research expert, but I know there is a tremendous amount of problem in that area.

Mr. **Wirth**. Now, tell me, if that is the case, and if advertisers are, as they proclaim, concerned about the public interest and the public health and so on, are there five times as many PSA's and education ads related to smoking and the health effects of smoking as there are now related to alcohol and the health effects of alcohol?

Mr. **Bell**. Are there more announcements about——

Mr. **Wirth**. No; I mean if one were to look at relative balances, one would say that if the problem is five times as big, therefore we ought to have five times as many PSA's on smoking as there are on alcohol.

Mr. **Bell**. I think, again, you have——

Mr. **Wirth**. Are there any PSA's on smoking?

Mr. **Bell**. My understanding is that there are. There was some suggestion that maybe there were not, but certainly this is a matter that the individual broadcaster and other media determine on their own judgment based upon the degree of concern with that issue in a given community. I think that right now the greater degree of public concern that has been raised has been with the question of abuse of alcohol, and drugs, and so forth.

Mr. **Wirth**. Before this came up a year and a half ago, were there a whole lot of PSA's and education efforts related to smoking and health?

Mr. **Bell**. I think that actually in terms of radio and television, probably not very much because, in fact, when the Congress saw fit to ban the advertising and remove the necessity for counteradvertising, that certainly removed some of the incentive on the part of broadcasters on this issue.

Mr. **Wirth**. That is a terrible admission, Mr. Bell. I thought that the reason broadcasters were doing this was out of their deep concern for the public interest and public education and so on. What you are just suggesting is that the only reason that people were doing this, in terms of alcohol, was pure self-interest to defend against the possibility of regulation. That is the logic of what you are saying.

Now, I think you probably want to reconsider that and say yes, indeed, we are concerned about the public interest—maybe it is unfair to pick on you. I'm not picking on you. I should ask Mr. Mann from the radio broadcasters how much they are doing in terms of advertising related to the public health problem of smoking, if in fact it is correct, what you all are saying, that you are concerned about PSA's and education programs because there is this problem out there.

Mr. **Mann**. I think that is a very important differentiation, and the whole key is that, yes, there is continuing effort on the part of radio broadcasters, with the American Cancer Society, with the Lung Society in their local communities because this is not a dead issue, this is a continuingly important issue. And broadcasters, particularly radio broadcasters, who are sensitive to things that are going on in their community, cannot ignore the enormous difference between those people who are suffering from the effects of smoking and ignore that issue completely.

Mr. **Wirth**. With that, then, Mr. Mann, do you air many, many more times the numbers of PSA's related to smoking as a health problem than alcohol as a health problem?

Mr. **Mann**. We air an enormous number of commercials for the Cancer Society and the Lung Society. I can't tell you offhand whether the stations around the country add an equal number or an increased number for one over the other.

Mr. **Wirth**. Can you get us those numbers, or can you get us a rough approximation of what that is?

Mr. **Mann**. I will do my best, sure.

Mr. **Wirth**. Do you see what I'm driving at?

Mr. **Mann**. Of course.

Mr. **Wirth**. I applaud what the broadcasters are doing in the area of the PSA's and education and so on related to alcohol. I think that is terrific. But I think that we also have to recognize that there is a good deal of skepticism around as to whether that is being done because of the pressure that is brought to bear by various public-interest groups related to alcohol. When that pressure goes down, will the PSA's and the education program go down? To counter that, it seems to me it would be incumbent upon the broadcasters and the advertisers to be able to say, no, in fact, we are continuing this effort and we have for some time.

Mr. **Mann**. That is the key, what you just said, for some time. We are not Johnny come latelies in this battle. For a long, long time, public service announcements on drunk driving and alcohol abuse have been running on radio stations across America.

Mr. **Wirth**. I would hope we would see that continue. I think that that is very important, to have that happen, and I think that we ought to be able to see from advertisers on television and so on—and I don't remember seeing that now for a long time—really good advertisements like the ones that we have seen this morning and others on drunk driving. You know, we no longer have these kinds of ads on smoking. The smoking problem is significantly worse in the United States, isn't it?

Mr. **Mann**. I live in North Carolina, so we don't run too many of those spots.

Mr. **Wirth**. I am sensitive to that. Joe Califano and the North Carolina delegation got along famously, didn't they?

Mr. Bell, you wanted to jump back into that. I'm sorry. I wanted to get Mr. Mann as a broadcaster. That is probably fair.

Mr. **Bell**. I cannot speak for the broadcasters and I was not trying to suggest why or what their motivations were. What I was trying to suggest was that various issues from time to time in the community become more intense than others, despite the fact that they may all be of equal concern, and you have to make judgments and decisions between which of the issues at a given time you are going to give the most attention to.

All I am saying is that in terms of decisions with respect to airing public service announcements, public affairs programming, and other things the broadcasters from time to time make those judgments based on the amount of debate and discussion which exists and concern which is expressed for them.

In the advertising industry, however, there are some $700 million a year contributed by the Advertising Council, for example, not just to one given type of public-service cause but to a wide variety of causes, and this does include the treatment of lung cancer, American Cancer Society, and all of these other issues, and those annoucements do run on the air and in newspapers, magazines, and other media.

But the question is always for the broadcaster, the advertiser: to which particular public service cause are you going to give the most attention at a given moment? That is not suggesting that the others are not important. It is very difficult to make that judgment.

Mr. **Wirth**. I appreciate that. My own perspective would be that the broadest issue here is the public health, and the more that can be done to encourage people to take care of themselves, we as a country are going to be better off. We are going to save an awful lot of money. The health care cost bill is going up very, very rapidly. And if you can discourage people through advertising not to smoke, or if you can encourage people in certain ways not to drink, and drive, and so on, we are all going to be better off, and then we can get into a series of other issues related to the first amendment.

It seems to me that the first goal ought to be that you all, I think, share and should continue to press as you have in the past on those public health concerns.

Ms. Kahn.

Ms. **Kahn**. I am a little bit concerned that we do not choose up sides depending on which side has the most deaths, and listening to that today bothers me somewhat, although we have been very much involved in trying to reduce young people smoking as well as young people drinking. I think you have to look at the broader problem in terms of alcohol than just whether a fewer number of people die as a result of that.

From our perspective we are concerned because we know that five or six students in every classroom in this country are living at home with an alcoholic or chemically dependent parent. We know that in court cases, that of every five domestic relations court cases, two of those are alcohol related. We know that the divorce statistics among alcoholic families are seven times as great as they are among normal families.

It is those statistics that draw the parameters of the problem for us, as well as how many actually die in alcohol-related accidents, although that, too, is simply devastating. We hope that this broader damage to the American home and the American family will not be skipped over simply because there is not an immediate statistic at the end of it that shows that a large number of people are dying.

Mr. **Wirth**. That is a very good point, Ms. Kahn. I don't think anybody would disagree with that, that there is an overall set of problems in the country related to alcohol, as well, that show up in a lot of damaging fashions.

Let me ask you again, Mr. Mann and Mr. Bell, do you have a sense of what percentage of public service ads aired now, related to alcohol, are on topics other than drunk driving, going to what Ms. Kahn was suggesting? The risks of alcohol, physical damage, family problems.

Mr. **Mann**. We have done a survey which we have shared with the committee, and the topic and the specific aspects of the topic was not a part of the survey, but it would be an interesting thing to try to delve into to be able to find out a little bit more specifically what time some of these public service campaigns and promotional annoucements have been run.

Mr. **Wirth**. Going to Ms. Kahn's point that this is a very broad problem with which I am sure you agree. If it is a very broad problem, then the public service advertisements and the education campaign and so on should go very deeply to the problem that drinking and driving is a part of it, and other parts of it are the items that Ms. Kahn so eloquently pointed out. You do not disagree with that?

Mr. Bell or Mr. Land.

Mr. **Bell**. We also showed the alcoholism campaign that has been running for several years now featuring very prominent people discussing this from their own personal experience. The information I have is that the alcoholism campaign of the Ad Council on National Media has resulted in an expenditure of around $40 million, so quite a bit of money has been expended on that, on that one subject.

Mr. **Wirth**. It is important to do. We would commend all of you for doing that. It is extremely important.

Mr. Land.

Mr. **Land**. I sympathize very much with Ms. Kahn here and her concerns, but what strikes me here is that we are talking about how to approach the problem, and we are in a democratic process with the various elements involved, from the advertiser, the advertising agency, the broadcast industry, the programmers, and so on.

We heard earlier today Mr. Fritts make a public commitment to you that the industry, led by NAB, would continue an all-oust effort in this direction. That commitment is important, and I committed independent television stations. I invite Ms. Kahn to deal with us because our concern is the children. That is our special area of service.

So I would urge the PTA and other concerned organizations to go to the broadcasters, to go to the advertisers and educate them to the job. That is really what has to go on. The broadcaster simply cannot be Solomonlike in everything. He has to make judgments in choosing among competing social issues and social problems. He cannot be the practicing sociologist in every case. So cases have to be made to him as well.

I think in the long run that process will lead more effectively to a kind of effective media handling and social handling than any of the regulatory formulas suggest.

Mr. WIRTH. Let me add one final question. I think this goes to you, Mr. Land, more than anybody. One of the things, in the time that I have been on this subcommittee working with you and the independents, one of the things we have all been concerned about, is the encouragement of diversity in American broadcasting, to have as many channels out there as possible.

If one believes in the first amendment, the first amendment provides that people should be able to choose for themselves and that Government shouldn't interfere. Now should there be some concentration of media that interferes, and therefore we want to encourage as many outlets as possible. Therefore, we have all worked to encourage independent television stations, and they have increasingly done better and better and better—as Mr. Murdoch's purchase might suggest, doing very well indeed.

My memory of the revenues going into independents suggests that independents are more dependent upon beer and wine ads than are network affiliates; is that correct?

Mr. LAND. To a considerable degree, and here is why. You have, first of all, about 130 stations coming on the air between 1979 and the end of 1984. It takes many years, as you know, for one of these stations to go into the black and earn some profits. Many of them are now in highly competitive situations in large markets and have entered into many small markets where heretofore we thought it was impossible to enter.

So I can say, I think, with some security that for the most part, they are either marginal or losing money at the present time, although I hope that picture will change. For many independents, the sports service has always been and continues to be an important element, enabling them to provide the diversity of which you speak because they have the time in prime time and daytime to devote the 2- and 3-hour blocks to professional baseball, and so on, on a daily basis.

It just so happens that because of the particular orientation toward primarily the male adult of these programs, the largest single sponsor category is beer. We are having a survey now completed which I hope to submit at a later date. It is not completed, but the early findings show that 20 to 25 percent of the revenues of these programs come from beer advertising. In some cases we find a startling figure, as high as 50 percent.

So you can see, at least in those cases—and of course, they are not universal—but in those cases the well-being of the station can really be tied in with the retention of the advertising. The only problem there is, I will admit and am glad to admit, that the public health comes first.

Mr. **Wirth**. The reason I bring that up is it seems to me that there is another competing public policy goal that we also have to be considering, and that is diversity in broadcasting.

Mr. **Land**. I would hardly disagree with you.

Mr. **Wirth**. This is another goal that may, in fact, be impinged upon or threatened or whatever. Certainly, it is a variable that ought to be considered in all of this debate.

Mr. **Land**. Certainly.

Mr. **Wirth**. And independents are more fragile economically. They may be more dependent on beer advertising because they are more dependent on sports offerings to get themselves launched and going. It would suggest that there are other kinds of thinking that ought to go on, perhaps, related to independents.

Mr. **Land**. I would agree.

Mr. **Wirth**. Do any of you have any comments you would like to make in closing for the good of the order?

Ms. Kahn.

Ms. **Kahn**. If I might. I was pleased that everyone seems to thinks these other questions that I have raised are important. Where I find that we cannot quite bridge the gap at this table is that those are the very kinds of questions that we would perceive should be aired as part of the counter messages.

I do not believe it is true that most people, either adults or young people, are aware of the impact on American family life that the use and abuse of alcohol has, and when we talk about children who are living at home with alcoholic parents or families that are into the domestic relations courts, those are the kinds of things that we think need to be shown in counter messages, and we do not see those in the PSA's.

We see the PSA's directed—and I'm glad to see them go in that direction—but I would like to not see them stop there at simply the connection between alcohol and driving. These other areas are areas that also desperately call for the kinds of counter messages done as well as many of the ones that we see today can be done, and we would like to be a party to seeing those kinds of messages reach families in this country.

Mr. **Wirth**. I would bet that this message went out loud and clear through Mr. Bell and Mr. Mann, and I would suspect there is somebody here from the NAB who has been listening to that, and Mr. Fritts will hear that plea, Ms. Kahn. I do not think there is anybody here who will disagree with that. Getting from here to there is the problem.

Mr. Mann, do you want to confirm that?

Mr. **Mann**. I don't have any problem with what Ms. Kahn said, but I would want to make certain that before this meeting was over, that I made the point of saying that all day long, we have been talking about television and not necessarily radio, and Dr. Atkin's survey entirely leaves out radio.

Ms. Kahn's remarks entirely discuss television, and although we in radio feel very sensitive to the responsibilities, we also have concern about being put together because the two mediums have really nothing to do with each other.

Mr. Wirth. Do any others have final words you would like to end with?

Mr. Drake, you are going to carry our message back to the Secretary and the administration as well, right?

Thank you all very much for being here. We appreciate your patience and support.

[Whereupon, at 2:30 p.m., the hearing was adjourned.]

[The following statements were submitted for the record:]

FREEDOM OF EXPRESSION
FOUNDATION

DR. CRAIG R. SMITH
PRESIDENT

TESTIMONY OF DR. CRAIG R. SMITH, PRESIDENT OF THE FREEDOM OF EXPRESSION FOUNDATION, BEFORE THE TELECOMMUNICATIONS SUBCOMMITTEE ON MAY 21, 1985

The First Amendment was added to our Constitution to protect the free marketplace of ideas.[1] Any restriction on that marketplace must meet severe constitutional tests. So I want to spend my allotted time today looking at those tests and how they apply to commercial speech. The Freedom of Expression Foundation is a broad-based coalition of unions, corporations, and telecommunications firms dedicated to the equitable deregulation of the electronic media. It has spent a good deal of time researching the implications of removal of the content doctrines now imposed by statute through the Federal Communications Commission.

One of those content doctrines, the so-called Fairness Doctrines is under consideration for expanded use by this Subcommittee. Before such a use is implemented, I strongly suggest that members of this committee note that the rationale for the imposition of the Doctrine has been severely eroded .[2]

More important, had the Founders of this nation foreseen the possibility of electronic publication, they certainly would have afforded it protection along with the printed press under the First Amendment.[3] Scarcity of communication channels was not an issue for the Founders.[4] Surely, they would have protected the approximately 10,000 radio stations and nearly 1,200 television stations in existence today.[5] That's why it seems unfair to single out broadcasters for advertising bans.

In 1968, the U.S. Court of Appeals for the D.C. Circuit upheld an FCC ruling that required radio and television stations which carried cigarette advertising to devote a significant amount of broadcasting time to the presentation of the case against cigarette smoking. Banzhaf v. FCC, 405 F.2d 1082, cert. denied 396 U.S. 842 (1968). In the Banzhaf case, the court dispensed with the First Amendment arguments of the tobacco and broadcasting industries by arguing that "the speech [product advertising] which might conceivably be chilled by this ruling barely qualifies as constitutionally protected speech." The Banzhaf case opened a regulatory can of worms because it basically held that if an advertisement raised an issue of public importance, the Fairness Doctrine would be applied.

Public interest groups moved quickly to take advantage of the FCC's cigarette precedent. They argued that the Fairness Doctrine should apply to all other product advertisements which raised important and controversial issues, including those for high test leaded gasoline[6], snowmobiles[7], and trash compactors.[8] One group even argued that advertisements designed to recruit volunteers for military service raised a controversial issue.[9]

In 1969, Congress passed the Public Health Cigarette Smoking Act which, among other things, prohibited the advertising of cigarettes on radio and television. With exception of the public service announcements that broadcasters put on the air, information on both sides of the debate over smoking was removed from the public view. Although the controversy over cigarette advertising subsided, the regulatory situation regarding advertising in general remained uncertain and inconsistent.

"Issue" advertisements are paid announcements that advocate ideas instead of selling products, a distinction that would drive a semanticist crazy. The Commission considers these advertisements to be "paid editorials" which the sponsor uses to make a "meaningful contribution to the public debate" on a given issue. This raises a significant problem for broadcasters, advertisers, and the public-at-large. Many corporations, Mobil Oil and Anheuser Busch, for example, sponsor both product and issue advertisements. Commission policy, however, is vague when it comes to providing objective guidelines for broadcasters to delineate between what is a product and what is an issue advertisement.

Nor have the courts clarified the delineation between issue and product advertising. In a recent case, a public interest group filed a complaint which alleged that the three television networks violated the Fairness Doctrine when they rejected a request to "balance the issue" raised in 60-second spot announcements for the United Way. These announcements showed a football player visiting with the United Way and ended with "thanks to you" the United Way "works for all of us." The complainant argued that the manner in which the United Way distributed its funds was controversial, and that the ads implicitly endorsed the procedure. The U.S. Court of Appeals for the D.C. Circuit ruled that the United Way ads were not controversial, that the Fairness Doctrine applied only when the broadcast statement amounted to advocacy of a position on one side of an ongoing controversy, and that statement obviously and substantially addresses the issue in a meaningful way.[10]

To avoid the time and expense of defending before the FCC their decision to air issue advertisements, broadcasters often refuse to accept them. The public is therefore denied access to valuable and important information. The American public recognizes that corporations have a right to participate in the free flow of ideas. A recent poll indicated that 85% of the public thought that corporations should be allowed to use television advertising to present their views on controversial issues.[11] Corporate America represents a great storehouse of information and knowledge which is a vital ingredient in determining sound public policy. To deny corporations, large and small, the right to use television to speak out on the vital issues of the day is to deny all Americans the opportunity to sample an important source of information.

In summary, under current rules, businesses are allowed to advertise their products and the product's merits, but issue advocacy, even in purchased advertising time, triggers the Fairness Doctrine. In 1974, the FCC refined this distinction. It wrote that these rulings apply the fairness obligation to those advertisements "which are devoted in an obvious and meaningful way to the discussion of public issues."[12]

Let's take a case in point. Lee Iacocca, the irrepressible Chairman of the Chrysler Corporation, can talk about his cars in his commercials; he can talk about the merits of their Japanese engines; but if he wants to talk about mandatory seat belt laws, which he favors, or air bags, which he opposes, most stations will not run his commercials for fear of being asked for free time to respond to Iacocca's paid advertisements. And those complaints have required a full hearing by the FCC to reach resolution.[13]

Under such circumstances, the public is deprived of useful information. In the case of Lee Iacocca's commercials, the public is deprived of information that would help them decide whether there should be seat belt laws--laws which would undoubtedly save the lives of many of the victims to which this committee will be giving no little amount of attention. In the case of the United Way, station owners would be right to shy away from ads which would cause them to be hauled before the FCC on a fairness complaint. Who loses in that case? Isn't it the child that receives benefits from the United Way program? Isn't it the handicapped person who receives rehabilitation treatment from a United Way program?

That's why the Freedom of Expression Foundation strongly supports repeal of the so-called Fairness Doctrine. And that's why Senator Proxmire, who had it codified in 1959, has changed his mind and wants it removed from the books once and for all.[14] He is not alone; the effort is bipartisan.[15]

Banning Beer and Wine Advertisments

Within the area of restrictions on advertising comes the specific topic that this Hearing addresses: Should beer and wine advertising be restricted? We believe such a ban would violate the Constitution and would deprive consumers of information important to their marketing choices. Our nation has always been committed to ensuring that more information, not less, is available to the public. In New York Times Company v. Sullivan, 376 U.S. 254 (1964), the Supreme Court reaffirmed this proposition when it stated that we are a nation committed to "the principle that debate on public issues should be uninhibited, robust, and wide-open."To take advertising options away from consumers is patronizing at best and unhealthy at worst. The Supreme Court said it best in 1976 in Virginia State Board of Pharmacy v. Virginia Citizens Council : "[P]eople will perceive their known best interests if only they are well enough informed, and...the best means to that end is to open channels of communication rather than close them."[16]

It is essential for this committee to carefully examine case law as it has developed on the issue of commercial speech. We have come a long way from Valentine v. Christensen, 316 U.S. 52, 54 (1942), where the Supreme Court concluded that the First Amendment simply did not apply "as respects purely commercial advertising."

In Bigelow v. Virginia, 421 U.S. 809 (1975), the Supreme Court recognized that commerical speech should be protected by the First Amendment. In Virginia Pharmacy cited above, all doubt was laid to rest. The Court argued that to be informed consumers needed the information that was provided in commercial speech. Said the Court: "As to the particular consumer's interest in the free flow of commercial information, that interest may be as keen, if not keener by far, than his interest in the day's most urgent political debate." 425 U.S. at 763. Finally, in Central Hudson Gas v. Public Service Commission, 477 U.S. 557 (1980), the Court said that commercial speech could only be limited if it was found to be misleading, false, or related to illegal activity. In re RMJ, 102 S.Ct. 929, 937 (1982) reaffirmed this position; the Court establishing a standard where the degree of regulation allowed is proportional to the degree of deception.

Clearly, any attempt to ban advertising would have to meet the strict tests which the Supreme Court has set for it.

Solutions

The answer to excessive consumption of alcohol in this country is not to punish the innocent consumer who uses advertising to help him make rational decisions about the marketplace and his health needs. Rather the solution to the problem is to punish or treat those who abuse alcohol with remedies that have proven successful. This is not an area the Foundation specializes in, but even a cursory reading of the available studies indicates that the following remedies should be used before we turn to a restriction on freedom of expression.

First, states should be encouraged to pass mandatory seat belt laws. Studies demonstrate that traffic deaths can be cut as much as 50% by such laws.

Second, drunk driving laws and awareness of them should be strengthened among the members of the public. We applaud the efforts of Mothers Against Drunk Driving and Students Against Drunk Driving for their heroic efforts to bring this issue to the attention of the public and in the statehouses of this country. We believe that their message is a valuable one, and one that would have an easier time making the airwaves if the Fairness Doctrine were repealed.

Third, the Federal Trade Commission, the Bureau of Alcohol, Tobacco, and Firearms, and the Surgeon General have the power to declare alcohol hazardous to our health if that is warranted. Furthermore, these agencies have oversight powers if ads misrepresent products, and they can even require the labelling of these products if a health hazard should be brought to consumers' attention.[17]

Fourth, this body and other official legislative bodies should continue to encourage broadcasters to keep up the excellent job they have been doing on this subject. Even before this issue was raised, the networks began curtailing the appearance of alcohol in their programs where such an appearance was purely gratuitous. The networks' movies-for-television have been highly rated and effective in attacking this problem. After one recent CBS presentation, Not My Kid, First Lady Nancy Reagan appeared and suggested readings on drug abuse.

The National Association of Broadcasters' study of local broadcasters shows that their efforts have been nothing short of heroic.[18] Nine out of ten stations aired public service announcements on drunk driving and alcohol abuse. Half produced their own public service announcements at their own expense. 80% aired stories about the subject on local newscasts. Over 65% aired full length public affairs programs on the subject. But given the danger of fairness complaints which have been triggered on such topics as mandatory seat belt laws and United Way appeals, we suggest that broadcasters would be doing a lot more if they were allowed to exist in a First Amendment environment.

Furthermore, the advertisers themselves have imposed codes of good practice, along with the producers.[19] The code of the brewers' industry strongly discourages ads which "encourage overindulgence." These self policing efforts show good faith on the part of those affected by this hearing, but more important, these efforts are much more in the tradition of American individual liberty and healthy competition than is government regulation of public expression. Only in the open marketplace of ideas can the private citizen educate him or herself on what is healthful, or harmful, enjoyable or painful. Once that education has been provided, it is up to the individual to make the rational choice in a free society. The government should not infringe upon that right unless it has clear and ample evidence to prove that the individual is being deceived, or by his choice, endangers the freedom of others.

It is clear that means other than restricting the First Amendment rights of consumers and broadcasters are possible to solve the problem,of drunk driving and alcohol abuse. Given those alternatives, I respectfully suggest on behalf of the Freedom of Expression Foundation that we embrace them while enhancing what the Founders called the free marketplace of ideas.

FOOTNOTES

1. See Freedom of Expression Act of 1983: Hearings Before the Senate Comm. on Commerce, Science and Transportation, 98th Cong., 2d Sess. 7, 9 (1984) (Statement of Dr. Craig R. Smith, President, Freedom of Expression Foundation).

2. See Freedom of Expression: Hearings Before the Senate Comm. on Commerce, Science and Transportation, 97th Cong., 2d Sess. (1982). Freedom of Expression Act of 1983: Hearings Before the Senate Comm. on Commerce, Science and Transportation, 98th Cong., 2d Sess. (1984).

3. Notice of Inquiry in Gen. Docket No. 84-282, FCC 84-140, 49 Fed. Reg. 20317 (Comments of the Freedom of Expression Foundation filed September 5, 1984).

4. John C. Armor, Substance and Shadows, The Original Meaning of Freedom of the Press, (Washington, D.C.: Freedom of Expression Foundation, 1984);David A. Anderson, "The Origins of the Presss Clause," 30 UCLA. Rev. 455 (1983).

5. FCC v. League of Women Voters of California, ___ U.S. ___, 104 S.Ct. 3106 (1984) at nn. 11, 12. In Footnote 11 the Court stated:

> The prevailing rationale for broadcast regulation based on spectrum scarcity has come under increasing criticism in recent years. Critics, including the incumbent Chairman of the FCC, charge that with the advent

> of cable and satellite television technology, communities now have access to such a wide variety of stations that the scarcity doctrine is obsolete. See, e.g., Fowler & Brenner, A Marketplace Approach to Broadcast Regulation, 60 Tex. L. Rev. 207, 221-226 (1982). We are not prepared however, to reconsider our long-standing approach without some signal from Congress or the FCC that technological developments have advanced so far that some revision of the system of broadcast regulation may be required.

And in Footnote 12 the Court said:

> We note that the FCC, observing that "[i]f any substantial possibility exists that the [fairness doctrine] rules have impeded, rather than furthered, First Amendment objectives, repeal may be warranted on that ground alone," has tentatively concluded that the rules, by effectively chilling speech, do not serve the public interest, and has therefore proposed to repeal them....Of course, the Commission may, in the exercise of its discretion, decide to modify or abandon these rules, and we express no view on the legality of either course. As we recognized in Red Lion, however, were it shown by the Commission that the Fairness Doctrine "has the effect of reducing rather than enhancing" speech, we would be forced to reconsider the constitutional basis of our decision in that case. 395 U.S. at 393.

6. See Friends of the Earth, 24 FCC 2d 743 (1970), rev'd, 449 F.2d 1164 (D.C. Cir. 1971). Also see Nekritz v. FCC, 502 F.2d 411 (1974).

7. See Peter C. Herbst, 40 FCC 2d 115.

8. See John S. MacInnis, Consumers Arise Now, 32 FCC 2d 837.

9. Green v. FCC, 447 F.2d 323 (1971).

10. National Committee For Responsive Philanthropy v. FCC, 652 F.2d 189, 191 (1981).

11. Advocacy Advertising by Corporations, Opinion Research Corporation of Princeton, New Jersey, September, 1980, p.10.

12. See The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act, 48 FCC 2d 1, 24-26 (1974). See also in re Elimination of Unnecessary Broadcast Regulation, 54 R.R. 2d 1043, 1049 (1983).

13. See National Committee for Responsive Philanthropy v. FCC., 652 F.2d 189, 191 (1981).

14. Senator Proxmire has introduced his bill in almost every session of Congress since 1961. This year, the bill is S. 22, 99th Cong., 1st Sess. (1985).

15. See S. 1038, which would repeal the Fairness Doctrine and is co-sponsored by Senators Goldwater and Packwood.

16. 425 U.S. 748, 770 (1976). See also Central Hudson Gas and Electric Corporation v. Public Service Commission, 447 U.S. 557 (1980).

17. See particularly Section [illegible] (f) of the Federal Alcohol

Administration Act and Sections 5, 12, and 15 of the Federal Trade Commission Act. FTC Chairman James Miller concluded, "No major investigation is warranted into the advertising practices of the alcohol industry." See *Christian Science Monitor* (May 7, 1984) p. 32.

18. "Public Affairs Survey Regarding Broadcasters' Contributions to Prevent Drunk Driving and Alcohol Abuse." (January 11, 1985).

19. See *Code of Good Practice of the Distilled Spirits Council of the United States*, November 15, 1983, which bans television advertising of hard liquor. Beer, wine and spirit industry representatives have been working with states for 20 years to develop a model advertising code. By 1975, 42 states had adopted requirements of the code.

PUBLIC COMMUNICATIONS
THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

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STATEMENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS
BEFORE THE TELECOMMUNICATIONS SUBCOMMITTEE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES
MAY 21, 1985

Many authorities, including the U.S. Public Health Service and the Secretary of Health and Human Services in their most recent reports to the Congress have recognized that alcohol is the most widely used and abused drug in America. It is ironic that there are restrictions on advertising and marketing of most drugs but none to discourage consumption of alcohol, where in excess of $1 billion is spent annually on advertising heavily directed at youth.

Since alcohol and advertising industries have not been able to institute adequate self-regulation, many citizens and organizations are now proposing restrictions on alcohol advertising.

Our youth, America's greatest national asset, are the hope and future of this great country. They deserve our best efforts to protect them from drug abuse. Existing scientific evidence of the far-reaching harmful effects of alcohol abuse requires that the public interest be protected by measures to restrict the excessive advertising of this tragically abused drug.

The Church of Jesus Christ of Latter Day Saints joins with others calling for a ban or stringent curtailment of alcohol advertising on all media.

The Church of Jesus Christ of Latter-day Saints
Public Communications Department
50 East North Temple Street
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5 February 1985

COMMENTS CONCERNING CHURCH STATEMENT TO U.S. SENATE SUBCOMMITTEE ON ALCOHOLISM AND DRUG ABUSE ON ALCOHOL ADVERTISING

The decision of Church leaders to encourage congressional action to ban or stringently control advertising of alcohol products, mirrors a growing national concern for the dramatic increase in teenage alcohol consumption.

A recent Gallup poll reported this week that:

> "A major social trend among teenagers in this country is reflected in their increased consumption of alcohol. Three years ago, 41% admitted taking an occasional drink of some alcoholic beverage. Last year, according to a Gallup poll, 59% of those aged 13-18 said they had used alcohol more than once, and 17% admitted trying alcohol once. Only 23% said they never touched the stuff, while 1% wouldn't comment.
>
> "Drunk or drug-impaired driving is the chief cause of death among Americans aged 15-24. Among teens who drive, 24% admitted that they had driven a car after using drugs or drinking. One in three also admitted to having ridden with a drunk driver of the same age.
>
> "As regards drug use, the Gallup survey revealed that 27% of all American teenagers admitted using marijuana but that the percentage zoomed sharply to 39% among those over 15. In short, substantial portions of our teenage population can be classified as users of marijuana and drinkers of alcoholic beverages."

Prime Time Television is "saturated with alcohol" but viewers rarely see the negative effects of alcohol abuse. Drinking is overwhelmingly portrayed as both socially desirable and relatively without negative consequences.

While national efforts to control drunk driving are commendable, it seems ironic that we place so little emphasis upon efforts to prevent the tragic consequences that are inherent in the rising tide of youth who begin to drink at an ever earlier age.

THE CHURCH OF
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STATEMENT OF THE NATIONAL CABLE TELEVISION ASSOCIATION

The National Cable Television Association appreciates this opportunity to provide the Subcommittee with its views on the role of advertising in alcohol abuse. NCTA is the principal trade association representing cable operators in the United States. Its members operate more than 2100 systems nationwide, which serve more than 70% of the nation's 38 million cable subscribers.

NCTA shares the concern of the Subcommittee over the problems associated with alcoholism and alcohol abuse. However, in the effort to remedy the problem of alcohol abuse, some have looked to the censorship of advertising or regulation of programming. We strongly disagree with these approaches.

The current debate in Congress centers around the charge that advertising is a major contributor to alcohol abuse. Some interest groups opposed to this advertising have asked Congress for an outright ban of broadcast and cable commercials for alcoholic beverages. As an alternative, these same groups have recommended that counter-advertising be required by federal law.

Suppression or regulation of speech inherently is constitutionally suspect. The Supreme Court has made it abundantly clear that commercial speech, such as the beer and wine advertising in question, is fully protected by the First Amendment. Mr. Justice Blackmun has succinctly described the state of constitutional law in this area:

"The Court recognizes that we have never held that commercial speech may be suppressed in order to further the State's interest in discouraging purchases of the underlying product that is advertised. Permissible restraints on commercial speech have been limited to measures designed to protect consumers from fraudulent, misleading, or coercive sales techniques. Those designed to deprive consumers of information about products or services that are legally offered for sale consistently have been invalidated."1/

Clearly, a ban on beer and wine commercials would be an unconstitutional prior restraint on the protected speech of advertisers.2/ Similarly, the intrusions into the editorial decisions of broadcasters and cable operators which would be forced by mandatory counter-advertising would abridge the guarantees of the First Amendment.3/

1/ Central Hudson Gas v. Public Service Commission of New York, 447 U.S. 558, 574 (1980).

2/ See, for example, Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 749 (1976).

3/ See, for example, Democratic National Committee v. CBS, 412 U.S. 94 (1973).

Even if the proposed restrictions on alcoholic beverage advertising did not founder on the shoals of the First Amendment, they should still be rejected by the Subcommittee, for they suggest an unwise and unsound policy.

The proponents of the alcohol advertising restrictions have attempted to ride the coattails of the cigarette advertising ban to justify the intrusion they seek on protected speech. Yet the situation with cigarettes was completely different than that which confronts the alleged connection between alcoholic beverage advertising and alcoholism, alcohol abuse, and drunk driving.

In upholding the FCC's restrictions on cigarette commercials, the D.C. Circuit Court of Appeals found those rules permissible primarily because of the unique, intrinsic danger to public health posed by cigarettes:

> "The danger cigarettes may pose to health is, among others, a danger to life itself . . . . (I)t is a danger inherent in the normal use of the product, not one merely associated with its abuse or dependent upon intervening fortuitous events."4/

4/ Banzhaf v. FCC, 405 F.2d 1082, 1097 (1968).

The interest groups seeking restrictions on alcoholic beverage advertising have failed to demonstrate any danger in normal use of alcohol that is similar or even remotely comparable to the dangers recognized by the Court in the normal use of cigarettes. They have also failed to demonstrate beyond mere allegation that there is a causal relationship between alcohol advertising and alcohol abuse.5/

The proponents of the restrictions focus attention on alcoholism, alcohol abuse, and drunk driving -- serious and emotionally-laden problems we would all like to do something about. Then they talk about advertising of beer and wine, and ask the Subcommittee to suspend logic and accept their intuitive perception that the former is caused by the latter. Sound public policy simply cannot be justified by this kind of capricious reasoning.

5/ One apparent explanation for the failure of the interest groups proposing advertising restrictions to present evidence to support their position is that the facts available tend to demonstrate that there is no connection between alcohol advertising and alcohol abuse. (See, for example, recommendations of the staff of the Federal Trade Commission in Docket 209-46, "Omnibus Petition For Regulation of Unfair and Deceptive Alcoholic Beverage Advertising and Marketing Practices.")

One of the principal reasons for the adoption of the First Amendment is that restraint of speech must not be based on a political decision or majority vote. If the Subcommittee were to accept the flimsy justifications offered by those seeking restrictions on alcohol commercials, it well could be faced with requests from other groups seeking similar restrictions on advertising of legal -- but controversial -- goods and services ranging, for example, from ads for proprietary drugs to ads for abortion services. It is precisely to preclude submitting free speech to referenda that the Supreme Court already has drawn clear lines of protection around such ads.[6]

The cable industry shares the concern of this Subcommittee with the problem of alcohol abuse. We stand ready to work with the Subcommittee to find a meaningful response to alcohol abuse. But as H.L Mencken said in another context, "It is possible to be against trying a can of Dr. Quack's cancer salve, and at the same time not be in favor of letting Uncle Julius die." No credible case has been made that the elimination of beer and wine advertising would result in any alteration in alcohol abuse. We further note that the placing of restrictions on advertising or the requirement for counter-advertising may reduce efforts which should be directed towards curing and preventing alcoholism and alcohol abuse.

The House Committee on Energy and Commerce, through its Subcommittee on Health and the Environment, has addressed the issue of alcoholism on a number of occasions in recent years. A consensus appears to have developed that alcoholism is a disease that needs prevention and treatment.

Suppression of constitutionally protected speech is not a response to the need for prevention or treatment, but is a sacrifice of liberty with nothing to be gained.

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[6] See Virginia State Board of Pharmacy, id., and Bigelow v. Virginia, 421 U.S. 809 (1975).

MARYLAND-DISTRICT OF COLUMBIA-DELAWARE BROADCASTERS ASSOCIATION, INC.

The Maryland-District of Columbia-Delaware Broadcasters Association, Inc. (MDCD), by its counsel, hereby respectfully submits for consideration by the Subcommittee on Telecommunications, Consumer Protection and Finance, its Comments on the issue of the broadcast of beer and wine advertisements.

MDCD is a trade association representing radio and television stations throughout the states of Maryland, Delaware, the District of Columbia and Northern Virginia. Its membership ranges from the licensees of small radio stations in communities such as Frostburg, Maryland and Bethany Beach, Delaware to the owners of major television stations in Baltimore, Maryland and Washington, D.C. Whether small or large, radio or television, however, the MDCD members stand united in their opposition to any ban, restriction, or counteradvertising measure imposed on the broadcast of beer and wine ads.

MDCD shares the concerns of this Subcommittee over the toll exacted by alcohol abuse in our country. We have all witnessed the tragic statistics reflecting lives lost or disabled in automobile accidents involving drunk drivers. We have also witnessed the devastation of individuals and families that must daily cope with the disease of alcoholism. Indeed, it is fair to say that all of us have, at one time or another, been personally and disturbingly affected by alcohol abuse, be it in our homes, our workplaces, or on our nation's highways. MDCD urges the distinguished Members of this Subcommittee to recognize, however, that this national tragedy cannot be cured through Congressional mandate. The answer to the pervasive problem of alcohol abuse does not lie in restrictive legislation affecting the responsible broadcast of commercial advertising.

The proponents of legislation that would ban broadcast of beer and wine advertising, or as a "compromise" alternative, mandate "equal time" for counteradvertising, assume a causal link between advertising and abuse. A preponderance of the evidence demonstrates, however, that responsible advertising does not encourage the misuse of alcohol. Indeed, following a recent and exhaustive review of this issue, the Federal Trade Commission found "no reliable basis on which to conclude that alcohol advertising significantly affects alcohol abuse." 1/ The same study revealed that on the spectrum of factors that influence alcohol consumption (as opposed to abuse), mass media exposure was considered to be among the weakest or non-existent of influences. The MDCD membership has, moreover, consistently endeavored to ensure that the beer and wine advertising broadcast over their stations is appropriate, responsible and not deceptive. Individual stations scrutinize the advertisements to ensure that they are in good taste. Those member stations that are network affiliates further benefit from the extensive and careful screening of advertisements for appropriateness by the networks' commercial standards departments. Since credible evidence does not show any causal link between responsible beer and wine advertising and alcohol abuse, and as the MDCD membership, like

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1/ See Recommendations of the Staff of the Federal Trade Commission in Docket 209-46, the Omnibus Petition for Regulation of Unfair and Deceptive Alcohol Beverage Advertising and Marketing practices," p. 2.

other broadcast groups, continues to ensure the appropriateness of such advertising, MDCD urges the members of this Subcommittee to find that there is no justification for legislative imposition of a ban or counteradvertising measure on beer and wine ads.

MDCD would further direct this Subcommittee's attention to the experience of broadcasters, the Federal Communications Commission and the Courts in the cigarette advertising controversy of the late 1960's and early 1970's. In an unprecedented 1967 decision, the FCC held that the Fairness Doctrine, which requires that broadcasters ensure that the public will be informed of competing viewpoints, was applicable to cigarette advertisements. 2/ The Commission found that these commercials raised a "controversial issue," triggering the Fairness Doctrine, but stated that "cigarette advertising presents a unique situation" in which the product promoted is inherently dangerous when consumed in any amount. 3/ The courts rejected this limitation on the applicability of the Fairness Doctrine to ads as artificial, however, and the FCC was thereafter bombarded with requests, from all manner of advocacy groups, for counteradvertising. 4/ For example, associations demanded presentation of waste recycling ads to counter trash compactor commercials, environmental conservation ads to counter car, gasoline and detergent promotions, and

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2/ Television Station WCBS-TV, 8 FCC 2d 381 (1967); stay and reconsideration denied, 9 FCC 2d 921 (1967).

3/ Id. at 943.

4/ Banzhaf v. FCC, 404 F.2d 1082 (D.C. Cir., 1968).

anti-Vietnam War announcements to counter Armed Services recruitment ads. 5/ Realizing it had opened a veritable "Pandora's Box" with its 1967 decision, the Commission reversed itself in 1974, stating: "we believe that standard product commercials, such as the old cigarette ads, make no meaningful contribution toward informing the public on any side of any issue." 6/ It concluded that the obligation of a licensee to address issues, such as health and smoking, arises from "public interest responsibilities, and should not grow out of a tortured or distorted application of fairness doctrine principles to announcements in which public issues are not discussed."

Some ten years later, this reasoning is still sound. Standard beer and wine commercials do not inform viewers, one way or the other, on an issue of public importance. Current efforts to legislatively mandate counteradvertising to such ads thus fly in the face of the Commission's well-reasoned 1974 decision to leave to the discretion of the broadcast licensee selection and airing of public service announcements. Should Congress not heed the Commission's example, it will soon find itself inundated with demands for legislatively mandated counterads to almost every product that is the subject of commercial advertisements.

5/ John S. McGinnis (Citizens Arise Now), FCC 8330-N (1971); FCC Ruling on WCBS-TV, WABC-TV and WNBC-TV, June 18, 1971. See also Peter C. Herbst, FCC 8330-0, March 16, 1971, and Fran Lee, FCC 8427-C, September 17, 1972.

6/ Fairness Doctrine and Public Interest Standards, 48 FCC 2d 5 (1974), aff'd sub nom, NCCB v. FCC, 567 F.2d 1095 (D.C. Cir. 1977), cert. denied, 436 U.S. 926 (1978).

MDCD would also urge the Subcommittee to recognize that broadcasters have long acknowledged and acted upon their public interest obligation to address the dangers of alcohol abuse. Most recently, the MDCD membership has been participating in the NAB-sponsored effort "Drunk Driving: Operation Prom/Graduation." This program, consisting of public service announcements and promotional materials targeted to high school students and their parents, advises of the dangers of alcohol-impaired driving during the celebratory prom and graduation season. MDCD also continues to participate with Mothers Against Drunk Driving (MADD) in public awareness campaigns. See MDCD Brochure submitted herewith as Attachment A. The public service efforts of MDCD on this score were recently cited by the Honorable Michael N. Castle, Governor of Delaware, who praised MDCD for contributing to safer state highways during the 1984 Holiday season. Washington area MDCD members also annually participate in the Washington Regional Alcohol Program (WRAP), sponsors of the successful "designated driver" and "dial-a-ride" programs during Holiday seasons.

In fulfilling their responsibilities as public trustees, broadcasters have sponsored public service announcements and participated in community public awareness efforts that address the problem of alchol abuse. Unlike cigarette smoking, alcohol consumption is not inherently dangerous and the broadcast efforts have thus been geared towards educating the public about responsible and appropriate use of alcohol. The beer and wine advertisements similarly do not encourage overconsumption or condone misuse, but depict the products' use in a reasonable and responsible fashion. To restrict or ban such advertisements thus would be detrimental to public education about responsible alcohol use and would once again surround the issue of alcohol-related problems with a disturbing and unhealthy silence. The alternative of mandated counteradvertisements would replace licensee discretion in fulfilling public service responsibilities with an unwarranted and unworkable Congressional mandate. In the absence of any link between responsible beer and wine advertisements and alcohol abuse, there is no justification for legislative adoption of these measures.

MARYLAND-DISTRICT OF COLUMBIA-DELAWARE
BROADCASTERS ASSOCIATION, INC.

By____________________________
Alfred C. Cordon

By____________________________
Dennis J. Kelly

By Marie Riordan Kaplan
Marie Riordan Kaplan
Its Counsel

CORDON & KELLY
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June 4, 1985

ATTACHMENT A

DID YOU KNOW...

- The degree of bodily impairment of blood alcohol concentration varies with the amount of alcohol consumed, the period of time over which the drinking took place, body weight and stomach content. Refer to the Know Your Limits Chart at the bottom of this card for a guide.
- Alcohol is alcohol. Beer is no less intoxicating than liquor. One ounce of 80 proof liquor is equal to 5 ounces of table wine which is equal to a 12 ounce can of beer.
- Black coffee and cold showers do not sober a person. Only time can do that. An average person eliminates alcohol at the approximate rate of one drink per hour.
- If you spot a suspected drunk driver on the highway, you can report that driver by CB radio. All State Police and some local police monitor CB channel 9.
- Automobile accidents are the single largest cause of death for men and women under the age of 40.
- We could reduce our highway deaths by as much as 50 percent if people wouldn't drink and drive.

KNOW YOUR LIMITS!

[illegible]

IF YOU ARE A VICTIM:

- Call the MADD representative nearest you.
- Contact the prosecuting State's Attorney and tell him of your commitment to see the criminal prosecuted to the fullest extent of the law in the interest of public safety.
- Actively participate in your case.
- As a victim, be aware that you do have rights.

CALL MADD FOR HELP
WE CARE
WE WILL RESPOND

[illegible]

Local police telephone numbers can be found on the inside cover of any telephone book.

In case of emergency, if you cannot find the appropriate telephone number, dial the operator and ask for assistance.

THIS BROCHURE COURTESY OF
MARYLAND/D.C./DELAWARE BROADCASTERS
ASSOCIATION, INC. IN COOPERATION WITH
MADD, MOTHERS AGAINST DRUNK DRIVERS

A Citizens Guide
on how to detect and

REPORT DRUNK DRIVERS

Call Local or State Police Immediately

WE NEED YOUR HELP

Efforts to reduce the tragic consequences of drunk driving are working. But if we are to continue the reduction in alcohol related deaths on our highways, active citizens participation is a must.

State and local police agencies need your help in identifying and reporting those drivers who insist on driving after having too much to drink.

Studies show that approximately one out of every two fatal crashes are alcohol related. All too often, it is the innocent victim who suffers from the irresponsible behavior of a drunk driver.

We have come a long way these past few years. Police officers, both state and local, continue to arrest more drunk drivers. New laws have been enacted to give police more teeth to address the problem and to tighten up previous legal loop holes. The Motor Vehicle Administrations have established stringent policies to deal with drunk drivers who refuse to take a blood alcohol test, and judges are handing out tougher penalties. And now we are asking you, the citizen, to join this fight against drunk driving.

Not only do the consequences of drunk driving cause death and injury but it also costs the taxpayers millions of dollars each year. The National Safety Council estimates that each fatality cost approximately $165,000. This means that drinking drivers cost taxpayers millions last year.

Now is the time for you to answer that so often asked question, "What can I do to help?" The next time you are driving and you spot a drunk driver call your local or State Police immediately. It just might save a life. And the life you save might be yours or a loved one's.

HOW TO DETECT THE DRUNK DRIVER

These twenty cues are the best ones for discriminating nighttime drunk drivers from nighttime sober drivers, and they account for more than ninety percent of all DWI arrests by police. These cues were developed by the National Highway Traffic Safety Administration and are based on results of field studies in which drunk drivers were detected. This guide is the most systematically developed method now available for visually predicting whether a vehicle operated at night is being driven by a sober or drunk driver. The following indicators are used by police in Maryland to detect drunk drivers at night.

1. Turning with wide radius
2. Straddling center of lane marker
3. Appearing to be drunk
4. Almost striking an object or vehicle
5. Weaving
6. Driving on other than designated roadway
7. Swerving
8. Speed lower that 10 mph below the posted limit
9. Stopping without cause in traffic lane
10. Following too closely
11. Drifting
12. Tires on center or lane marker
13. Braking erratically
14. Driving into opposing or crossing traffic
15. Signaling inconsistent with driving actions
16. Slow response to traffic signals (sudden stop; delayed start)
17. Stopping inappropriately (other than in lane)
18. Turning abruptly or illegally
19. Accelerating or decelerating rapidly
20. Headlights off at night

*These cues are listed in descending order of probability that the person observed is driving while intoxicated. Any combination of the above visual cues increases the probability that the driver may be intoxicated.

HOW TO REPORT DRUNK DRIVERS

Driving a motor vehicle while impaired is a criminal offense which all too often results in tragedy. It is therefore important that you report all drunk drivers to State or local law enforcement agencies as soon as they are detected. Here are a few steps to report a drunk driver:

– –If reporting by C.B. radio, use Channel 9. All State Police installations and some local police agencies monitor this channel. If you reach other C.B. monitors, such as REACT, request them to telephone the nearest local or State Police installation and to relay your information to the police. Stay in contact with the monitor or mobile unit that is handling your call.

Also, many police cars are equipped with C.B. radios. If contact is made with a police officer on patrol via your C.B. radio, keep the officer informed as to the location until the officer can locate you. The officer will then observe the violator and take the appropriate enforcement action.

– –If reporting by telephone, refer to the inside front cover of the telephone directory for the number of the appropriate local or State Police installation. If no phone book is available, dial the operator and ask for the local or State Police.

– –When you make contact with the police, provide them with the following information:

a. Your location and the location of the suspected drunk driver, his direction of travel and the time observed.
b. The make and color of the vehicle and the license plate number.

WHAT NOT TO DO WHEN REPORTING A DRUNK DRIVER

1. Do not attempt to stop the vehicle.
2. Do not attempt to follow if the vehicle exceeds the posted speed limit or if any other hazard may exist due to following the vehicle.
3. Do not disregard any traffic control signals in an attempt to keep the drunk driver in view.
4. Do not follow the drunk driver too closely, as he may stop suddenly.
5. Do not get so engrossed in following the drunk driver, that you begin weaving in the road with the drunk driver.
6. Do not attempt to detain the drunk driver if he should stop.
7. If using a Citizens Band Radio, do not argue with other persons on the channel, or interfere with another person while they are reporting an emergency.
8. Do not request other CBers to respond to the area once the police have been notified.
9. Do not attempt to act in the capacity of any police, fire, or medical person, unless you are properly trained and authorized to perform that function.
10. Do not attempt to assist any law enforcement officer while he is apprehending a drunk driver, unless requested.

TESTIMONY

of

Jay H. Feaster, Special Assistant to
The General Counsel
The American Legal Foundation

I. INTRODUCTION

My name is Jay H. Feaster and I am Special Assistant to the General Counsel of the American Legal Foundation ("ALF" or "Foundation"). At this time, I would like to thank Congressman Wirth and the members of this Subcommittee for inviting ALF to present written testimony for the record on the important topic of "Beer and Wine Advertising: The Impact of the Electronic Media."

The topic at hand has been a hotly-debated one, sparking studies on both sides of the issue. However, the results of these studies have been inconclusive as to whether a causal link can be established between media advertising and the use and abuse of alcohol.[1/] As a law center, ALF has no particular expertise in this area and therefore will not comment on whether such a causal link, if any, exists.

ALF does have expertise in issues concerning the proper application of the Fairness Doctrine, and it is in this regard that ALF offers the following testimony. The Foundation firmly

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1/ ALF draws the Subcommittee's attention to recent Senate hearings conducted by the Senate Subcommittee on Alcohol and Drug Abuse, as well as the recent FTC decision to dismiss a petition by SMART (Stop Marketing Alcohol on Radio and Television), which called for a ban on alcohol advertising or, in the alternative, to mandate counteradvertising, as evidence that empirical studies have led to inconclusive results. (Subcommittee Hearing held February, 1985. FTC decision announced April 16, 1985. See, Broadcasting Magazine, April 22, 1985, pp. 102-03.)

believes that an extension of the Fairness Doctrine to cover the commercial advertising of alcohol is both dangerous and unwise, and would directly contravene the intentions of the Federal Communications Commission ("FCC" or "Commission") in applying the rule. ALF urges that the Subcommittee resist pressures to force broadcast licensees to ban the advertising of alcohol on television by applying the Fairness Doctrine to such advertising.

II. INTERESTS OF THE AMERICAN LEGAL FOUNDATION

The American Legal Foundation is a national non-profit public interest law center that engages in litigation and the administrative process in media-related matters affecting the broad public interest. ALF represents the viewing interests of approximately 40,000 supporters nationwide.

ALF devotes all of its resources to cases and issues relating to the media. It is dedicated to ensuring that the media act in a fair and responsible manner in reporting the news to the public.

In order to achieve its goals, the Foundation has appeared before a wide variety of forums, both legal and non-legal. Through these and many other legal and administrative proceedings, as well as through public appearances, scholarly writing, and debates, ALF has continued to meet its commitment to serve the public interest. It is in furtherance of that commitment that ALF offers the following testimony.

III. COMMENTS OF THE AMERICAN LEGAL FOUNDATION

In addressing whether the Fairness Doctrine should be applied to the commercial advertising of alcohol, it is important to remember what the Doctrine does. The Doctrine requires broadcasters to provide a reasonable opportunity for the discussion of conflicting points of view on controversial issues of public importance. The goal of the Doctrine is to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail. Red Lion Broadcasting Co., Inc. v. FCC, 395 U.S. 367 (1969).

ALF believes that pure commercial advertising, minus a "meaningful statement which obviously addresses or advocates a point of view on a controversial issue of public importance," is not the type of broadcasting speech designed to be regulated by the Doctrine. The FCC adopted that exact standard in its Fairness Report, 48 FCC 2d 1, 23 (1974), and noted that "if the ad bears only a tenuous relationship to the debate, or one drawn by unnecessary inference, the Doctrine would clearly not be applicable." Id., at 24.

As defined by the FCC, it is obvious that the Fairness Doctrine was not intended to, and should not now, apply to commercial advertisements for alcohol. The issue in question in ads for a particular brand of beer or wine is just that: an advertisement for a certain brand name, and not a statement by the brewing industry advocating alcohol abuse. Advertisements for beer and wine are not in any way meaningful or substantive statements on a controversial issue of public importance. To decide otherwise, and say that an ad for "Brand X or Y" is actually a statement on a controversial public issue, is to subvert the original purpose of the Doctrine and cloud the actual issue.

The FCC, by its own admission, made just such a mistake with regard to the decision to apply the Doctrine to the old cigarette ads. *See*, *Banzhaf v. FCC*, 465 F.2d 1082 D.C. Cir. (1968). According to the Commission, the issue became the desirability of smoking, and not the content, purpose and function of the ads themselves. *Fairness Report* at 24. The fact that there was a controversial issue underlying or surrounding the entire industry was enough to trigger application of the Doctrine.

The Commission has gone out of its way since that time to note what an erroneous and unwarranted decision it had made. "A mechanical approach...was a substantial departure from the Doctrine's central purpose, which is to facilitate the development of an informed public. Standard product commercials, such as the old cigarette ads, *make no meaningful contribution toward informing the public on any side of the issue*." *Id*. (emphasis added).

If this Subcommittee decides to apply the Fairness Doctrine to standard commercial advertising, such as beer and wine ads, there is no logical and meaningful place to draw a line. *All* commercial advertising will be drawn into the Doctrine's web.

For example, in light of protest movements calling for disinvestment of U.S. companies in South Africa, the Doctrine would have to be applied to any and all commercial product advertisements made by such companies, or to travel advertisements to South Africa. Time would have to be allotted for "the other side" to point out why the American people should not support companies doing business in/with South Africa.

Application of the Doctrine to beer and wine ads would also lead to its application in situations involving commercials for bread, cereal and other wheat products. Surely the issue of a grain embargo with the Soviet Union is important and controversial. Ads which advocate the sale of wheat products would be viewed as making a "statement" about such embargos, and the other side would have to respond.

Before these possible applications of the Doctrine are dismissed as too unrealistic, the Subcommittee should review the case of Friends of the Earth v. FCC, 449 F.2d 1164 (1971). In that case, which followed immediately after the FCC decided to apply the Doctrine to cigarette commercials, a scenario similar to those just posited was raised. The U.S. Court of Appeals for the District of Columbia noted that once the Doctrine had been applied to the cigarette ads, the Court had no choice but to extend the application to other similar situations. Id. When television stations began broadcasting advertisements stressing the value of large automobile engines and high-test gasoline, the Friends of the Earth filed a petition requiring the FCC to apply the Fairness Doctrine to such commercials. The court held that such an application of the Doctrine was correct in light of the cigarette case ruling.

Reasonable time had to be provided by the broadcast licensees for messages pointing to a relationship between automobiles and air polution. It must be noted however, that the ads in question were for specific brand name automobiles, such as the Ford Mustang and Chevrolet Impala, and not for larger engines or high-test gasoline generally.

The FCC realized the dangers involved in haphazardly extending the scope of the Doctrine beyond its intended reach. Thus, in the 1974 Fairness Report, the Commission noted that extension of the Doctrine had placed broadcasters and the FCC in the undesirable position of attempting to "balance two sets of commercials which contribute nothing to public understanding of the underlying issues." Fairness Report at 26. It was this recognition of a serious problem which prompted the Commission to say that, "...absent some meaningful or substantive discussion...the usual product commercial cannot realistically be said to inform the public on any side of a controversial issue of public importance." Id. Application of the Fairness Doctrine to beer and wine commercials would place the FCC and broadcasters squarely in a position they do not need or want to be in. Further, it would put them both in a position from which the FCC has worked diligently to extricate them.

ALF does not believe that this Subcommittee could intend to repeat the failures of the past by applying the Fairness Doctrine to beer and wine advertisements. If such a course of action is taken, the mythical Pandora's box will be a reality for broadcasters, the FCC and the public. In the long run, application of the Doctrine to cover such a situation as the one presented here could actually harm the public interest.

Finally, ALF notes that the FCC is not the only organ of government to realize the fact that standard product advertisements should not be covered by the Doctrine. In deciding the Banzhaf case mentioned earlier, the U.S. Court of Appeals for the D.C. Circuit noted:

> Promoting the sale of a product is not ordinarily associated with any of the First Amendment. As a rule it does not affect the political process, does not contribute to the exchange of ideas, does not provide information on matters of public imnportance and is not... a form of self-expression.... Accordingly, even if...such commercials are protected speech, we think they are at best a negligible part of any exposition of ideas, and are...of slight social value as a step to truth....

Banzhaf v. FCC, 405 F.2d 1082, 1101-02, D.C. Cir. (1968) quoting Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942).

The evidence clearly indicates that product advertising, such as commercials for particular brands of beer and wine, are not statements of any kind about important, controversial issues. Beer and wine ads sell a product. They do not make a statement which should be brought under the guise of the Fairness Doctrine. To decide otherwise involves overhauling the purpose of the Fairness Doctrine, stretching its applicability to an absurdity, and trivializing those genuine controversial issues of importance where the Doctrine is properly invoked.

IV. CONCLUSION

ALF is one of many conservative organizations in support of the Fairness Doctrine as it presently exists. *See*, *In the Matter of Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees*, Gen. Docket No. 84-282, September 6, 1984. However, ALF cannot in any way advocate an extension of the Doctrine to cover the commercial advertising of beer and wine products. Such an extension is a dangerous course, and a course which the FCC, the group with the most hands-on experience with the Doctrine, once embraced but has since rejected outright. This Subcommittee must learn from the mistakes of the past rather than repeat them here.

ALF believes that the Fairness Doctrine should be applied to commercial advertising only when such ads make or present some meaningful and substantive statement, or address and advocate a point of view on a controversial issue of public importance. Beer and wine advertisements, as they presently exist, do none of the above. There is no need for the Fairness Doctrine to make them into something they are not.

Respectfully submitted,

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May 21, 1985

WRITTEN STATEMENT OF
ALAN G. EASTON
VICE PRESIDENT, CORPORATE AFFAIRS
MILLER BREWING COMPANY

I would like to thank the members of the House Subcommittee on Telecommunications, Consumer Protection and Finance for the invitation to provide testimony for the record on the subject: "Beer and Wine Advertising: The Impact of the Electronic Media."

The underlying issue is clearly one of great social and economic significance. Alcohol abuse in its many manifestations, specifically including underage consumption, is an extremely serious problem deserving of the most careful analysis by the Subcommittee, Congress as a whole, the pertinent regulatory agencies and, in fact, our society at large.

The challenge facing the Subcommittee is that the issues involved are, at the same time, both simple and complex. The net effect of abusive consumption of alcohol on society is simple and devastating. It is abundantly seen and readily quantified. In sharp contrast, the causes are highly complex, often judgmentally assessed, and multi-faceted.

For precisely this reason, it needs to be recognized that the relatively simple task of identifying the socioeconomic effects of the problem does NOT translate to a rationale for simplistic solutions. Equally important, the emotional public reactions quite properly evoked by the devastating effect of abusive consumption of alcohol do NOT provide a justification for either deliberations or actions based on emotional assertions rather than facts.

What are the facts? There are several specifically pertinent to the subject before the Subcommittee.

First and foremost, abusive consumption is an extremely serious problem and must be treated as such. There can be no tolerance for ulterior motives and hidden agenda among those striving to influence the debate.

Second, alcohol abuse is a long-standing problem faced by virtually all Western cultures for many centuries. It existed as a major social concern long before broadcast or any form of advertising became prevalent. It is a centuries-old problem despite the relatively recent discovery of it by certain social engineers and moral entrepreneurs. Throughout those centuries, the single lesson learned is that controls on the product and/or its presentation and availability do not work. The American public recognizes this and, in fact, broadly identifies the productive approach. In the 1984 Gallop Attitudinal Survey, almost 80 percent of a large representative sample of adult Americans agreed that "an alcohol education program is the most effective way to combat alcohol abuse." The AFL-CIO, in a policy statement from its Executive Council, opposes bans or mandatory counter advertising and instead "advocates programs to increase public understanding of the real causes of alcohol abuse..." And, a host of highly qualified experts in the field of alcohol abuse treatment reject the concept of controls (including an advertising ban or mandatory counter-advertising) and instead support an educational approach as the only viable long-term solution.

Third, the vast majority of Americans who consume alcohol do so responsibly and in moderation. Thus, the core concern is not consumption per se but abusive consumption. There are those, however, who suggest that there is a correlation; that if total consumption is forcibly reduced through governmental intervention, abusive consumption will somehow follow. But in the real world, the reduction would occur among those who are already consuming responsibly and moderately while those who exhibit the flaw of abusive consumption will continue to do so.

Fourth, beer and wine advertising is designed to establish and reinforce brand preferences among consumers who elect to drink. This is documented by the real world experience of recent years. At a time when beer and wine advertising expenditures have increased significantly, both total and per capita consumption has declined.

Fifth, there is no scientific evidence which supports the assertion of a causal relationship between beer and wine advertising and abusive (including underage) consumption. To the contrary, there is a massive body of scientific evidence indicating that advertising specifically is not a significant causative factor.

This fifth critical fact deserves elaboration. The existing body of research on the relationship between beer and wine advertising and either absolute consumption or abusive consumption is extensive and has been compiled by social and other researchers with eminent qualifications. With the single exception of the Atkin and Block study (relied upon heavily in the pleadings from the Center for Science in the Public Interest), the conclusion of this research is that there is an absence of a meaningful causative link. As to the Atkin and Block study, no less than the Federal Trade Commission has concluded that: "There are serious flaws in the Atkin and Block study that render it entirely inconclusive..."

In fact, during the course of the past year, the staff of the Federal Trade Commission made extensive analysis of the whole range of literature surrounding this public policy debate, specifically including that cited by the Center for Science in the Public Interest in support of its 1983 petition seeking an advertising ban and/or mandatory counter-advertising. Having done so, the FTC found "...no reliable basis to conclude that alcohol advertising significantly affects consumption let alone abuse."

Still, the leading advocate of an advertising ban and/or mandatory counter-advertising -- the Center for Science in the Public Interest -- dismisses a substantial amount of the scientific research on the basis that it was funded, at least in part, by alcohol industry interests. It is ironic that a self-proclaimed "Center for Science" rejects the eminent qualifications and both the ethical and academic independence of such as the American Council on Science and Health, Duke University, the University of Colorado at Boulder, the Social Sciences Institute at Washington University-St. Louis, Johns Hopkins University Medical School, the Kaiser-Permanente Foundation and a litany of others solely on the basis of funding sources. This is especially so when one recognizes that CSPI has yet to spend one penny to fund research; perhaps suggesting that it is consciously avoiding the likelihood that research it might fund would produce precisely the same conclusions. In this connection, it is interesting to note that CSPI originally endorsed and participated in the formation of the National Partnership, a comprehensive effort to attack the problem of alcohol and drug abuse developing under the auspices of the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice, but later dismissed this effort as "a diversion."

Nonetheless, there seem to be certain social researchers in whom the CSPI places stock. One, in particular, is Dr. L.D. Johnston of the University of Michigan who testified in support of CSPI before the February 7, 1985, hearings held by the Senate Subcommittee on Alcoholism and Drug Abuse chaired by Senator

Hawkins. Dr. Johnston's testimony focused particularly on the issue of underage consumption, and certain of his findings are especially pertinent to the question of causal relationship. Dr. Johnston has, over a period of years, researched the experience with alcohol of high school seniors. The base numbers involved are unacceptably high; there is a serious problem of underage consumption. However, in the five years of 1980-1984, Dr. Johnston's own data showed:

- the use of any alcohol in the preceding 12 months was down 2.2 percent;
- the use of any alcohol in the preceding 30 days was down 6.7 percent;
- the daily use of any alcohol was down 20 percent;
- the consumption of five or more drinks in a row in the preceding two weeks was down 6 percent;
- the percentage of high school seniors disapproving of trying one or two drinks at all was up 8.8 percent;
- the percentage of those disapproving of one or two drinks on a daily basis was up 5.7 percent;
- the percentage of seniors reporting that they associated with peers who did not drink at all was up 13.2 percent.

Again, the base numbers are unacceptably high, but it must be asked how these positive trends can be occurring during a period of rapidly increasing beer and wine advertising if, in fact, there is a causal relationship. The simple conclusion must be that the alleged causal relationship does not exist.

Failing to demonstrate a causal relationship between advertising and abuse as justification for an advertising ban, events since the February 7, 1985, Senate Subcommittee hearing indicate that the emphasis of the social engineers now is shifting to proposals for so-called counter-advertising on radio and television; in short, applying the Fairness Doctrine to beer and wine advertising. In examining this new emphasis, it must be asked -- in the absence of a causal relationship between advertising and consumption per se or abusive consumption -- what is being countered?

Counter-advertising, as in the case of an outright prohibition of alcohol beverage advertising, represents an attempt to impose harsh punishment on the basis of allegations that simply cannot be supported by evidence. The hidden agenda of such proposals is obvious: to make broadcast advertising for beer and wine so expensive to both advertisers and broadcasters as to force a substantial portion of the commercials off the air. The proposal represents an insidious, back-door version of a ban. It constitutes an unwarranted form of censorship.

Beer and wine are entirely legal products, but fall within a special category of products which have the potential for being abusively consumed. A long list of products from automobiles to aspirin to kitchen knives also fall in this category. In considering the proposals of so-called counter-advertising for beer and wine, we must be prepared to also deal with "Big Brother" opening "Pandora's Box." Will "public interest" zealots move to require that grocery store ads for red meat, dairy products, eggs, salt and sugar be followed by counter ads featuring people denouncing those products for their potential ill effect if consumed excessively or abusively? Will automobile and tire ads that feature high performance be followed by counter ads? What about aspirin, over-the-counter sleep and diet aids, sporting goods, power tools and so on?

The reality is that there already exists a massive flow of information to the public at large upon which it may base judgment about alcohol beverages. There is an absolute bombardment of news coverage from all of the media, talk shows on radio and television, lengthy documentaries and feature stories, public service announcements, special programs for organizations, government-supported educational initiatives, state and local citizen council activity and so on. In reality, the Center for Science in the Public Interest and other activists owe their celebrity status to the media, particularly television. It is significant that alcohol beverage critics loudly excercise their First Amendment right to free speech but want to curtail someone else's.

A massive educational effort already exists. Miller Brewing Company, along with others in the industry, conduct national education programs to warn people of the dangers associated with abusive consumption. We contribute large sums of money to organizations that research problems related to alcohol, others that treat alcoholics and still others that educate the public. Miller and others are quick to cooperate in initiatives such as the National Partnership.

Miller and others in the industry are committed to constructive solutions to alcohol abuse. There is ample evidence that these combined constructive solutions are working. Society's non-acceptance of drunkenness has increased sharply. The drunk at a party is no longer funny and there is public condemnation of drunk driving and other abusive behavior. Americans are at long last reaching a mature consensus on the individual's responsibility when choosing to drink or not to drink alcohol beverages.

Still, the Center for Science in the Public Interest and others are trying to convince Congress and the American public that there is an alcohol beverage-caused crisis in America. But, as Professor Dwight Heath at Brown University said in a February 25, 1985, Wall Street Journal article, "...the data point in just the opposite direction." Dr. Heath goes on to say: "Clearly there are sociological and psychological factors involved in the new temperance movement that do not respond to cold scientific facts."*

The zealotry involved is dramatically evidenced in the statement of one advertising ban proponent. Admitting that advertising plays a "relatively minor" role in influencing young people as to alcohol consumption, and acknowledging that parental role models and peer pressure are the principal influences, Michigan State University Professor Charles Atkin said nonetheless: "It's easier to regulate advertising than parents and peers."

It other words, the plea is to do what's easy rather than what's right and constructive.

Seen in the light of reality and reason, proposals by CSPI and its allies are ludicrous. At Miller, we pledge our efforts to work with others to reduce alcohol abuse and urge the rejection of counter-advertising or any other form of censorship.

Thank you for considering my comments.

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*Complete text in Representative Silvio Conte's insert into the March 7, 1985 Congressional Record--attached.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, FIRST SESSION

Vol. 131 WASHINGTON, THURSDAY, MARCH 7, 1985 No. 27

House of Representatives

BEER AND WINE ADVERTISING

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 7, 1985

Mr. CONTE. Mr. Speaker, in recent months there has been much discussion of the question of whether beer and wine advertising in the broadcast media should be restricted or even banned. A recent article in the Wall Street Journal discussed this issue, along with others relating to the question of factors influencing alcohol use and abuse. As the article points out: "It is a truism that the root of most so-called 'alcohol problems' lies in individual drinkers and not in the beverage." The article also raises questions, based upon the experience of other countries in trying to control alcohol consumption, of the usefulness of restricting advertisers' free speech as long as they do not misrepresent their products.

I commend this article to my colleagues' attention as a useful addition to the debate on alcohol-related issues.

The article follows:

[From the Wall Street Journal, Feb. 25, 1985]

IN A DITHER ABOUT DRINKING

(By Dwight B. Heath)

More than 50 years after the repeal of Prohibition, there is a strong and growing movement for increasing controls over the distribution and consumption of alcoholic beverages, in the U.S. as well as much of the rest of the world. Rejecting the Neo-Prohibitionist label that is used by some detractors, spokesmen have recently begun to refer to a New Temperance Movement. Unlike most of the temperance movements of the past century, which were motivated by strong religious convictions, the new movement expresses concern about costs to national health, social welfare and the economy. This is an interesting social phenomenon in the U.S., which, rightly or wrongly, has generally been viewed as a bastion of individual freedom—sometimes to the point of over-permissiveness and self-indulgence.

A loose coalition without an overarching organization, this movement has won both popular support and legislative changes in recent years, using a combination of intellectual and emotional appeals, depending on the audience. The scientific justification usually offered is that a wide range of the problems that occur in various societies are in direct proportion to per-capita consumption of alcohol. There is a strong "commonsense" appeal to such a view, and its enunciation by a French statistician in the 1950s is often cited in the scientific literature, even though in the ensuing years it has been discredited by numerous well documented exceptions.

STRICTER DWI LAWS

The emotional appeal is more direct, often focusing on the death and suffering of children involved in traffic accidents, the psychic pain of accident survivors or abused spouses, and similar damages that are attributed to alcohol. Interest groups have proliferated, and they have demonstrated how rapidly some changes can be made. Their political impact was clearly demonstrated in the media hype that accompanied signing of an amendment to the Surface Transportation Assistance Act, which will soon deny federal construction funds to any state that has not raised the minimum legal age for purchasing alcohol to 21. This occurred within a few days after President Reagan, who champions minimal regulation, had vowed to oppose it.

Other accomplishments of the movement are the increasingly stringent state laws against driving while intoxicated (DWI): At least 16 states now impose jail sentences for a first offense and fully 41 for a second. Heavy fines, license suspension and other judicial penalties are often underscored by informal social sanctions, such as having convictions prominently reported in newspapers. Both police and civil libertarians are ambivalent about frequent calls for stricter enforcement of DWI laws, increasing spot-checks at roadblocks, etc.

Massachusetts has banned "happy hours," "ladies' nights" and other promotional discounts that had become customary at many public drinking establishments, and other states are considering similar restrictions. Old "dram shop laws" are being enforced and new ones enacted, to penalize bartenders, restaurateurs and others for negligence in serving drinks that result in a customer's diminished capacity and damage to others. A few juries have recently held a host responsible for damages caused by a friend who'd been drinking at a private party in the host's home. New York City requires that public drinking establishments post signs warning that alcohol may be harmful to a pregnant woman and her fetus. Federal agencies are again being lobbied to require that alcoholic beverage containers carry warning labels; the "sin tax" (in itself, a revealing term) on distilled beverages will be raised sharply this year; and there is increasing clamor to ban beer and wine ads from television. All this might suggest that drinking is causing a crisis in the U.S., but the data point in just the opposite direction.

There is much evidence that in the U.S. the average adult's alcohol consumption increased virtually every year following repeal. But the trend peaked before the current reform push gained steam; consumption has actually been diminishing since 1980. When dealing with social customs, it helps to set them in a historical perspective. With that viewpoint, one must wonder about this country's first 50 years in comparison with the past 50 years: Between 1790 and 1840, the average adult consumed nearly three times as much alcohol as between 1930 and 1980, as the accompanying graphs show.

While no one should doubt that there were broken families, accidents, damaged livers, lost jobs and other alcohol-related problems in those early years of our republic, they seem to have been far less prevalent than in recent history. In a similar vein, although the number of traffic fatalities is far higher than it should be, the rate of such deaths—whether in relation to number of miles driven, vehicles registered or drivers licensed—has declined steadily since such records were first compiled more than 50 years ago. There is a special irony to the fact that the campaign against drunk driving has become increasingly vociferous during the past few years, when traffic fatalities have been dropping. Clearly there are sociological and psychological factors involved in the New Temperance Movement that do not respond to cold scientific facts.

It is a truism that the root of most so-called "alcohol problems" lies in individual drinkers and not in the beverage. Most systematic surveys agree in that nearly two-thirds of adult Americans drink and that only about 10% of drinkers suffer in any respect from drinking.

It is almost as if people were shifting the blame when they insist that beers and wines are too dangerous to be advertised on radio or television. (Distilled beverages never have been so advertised, thanks to a voluntary agreement among the producers and importers.) Rich advertisers make an easy target, and it may be comfortable to blame "hidden persuaders" for enticing a child whose parents have not taught him about alcohol abuse. Little mention has been made in the popular press about increasing evidence that two drinks a day appear to be healthful in combating arterial and heart disease, quite apart from their potential value in providing relaxation, symbolizing congeniality or enhancing a meal.

Meanwhile, ships are still christened with champagne, and sports victories and weddings are often marked by lavish use of alcoholic beverages. For a while, the three-martini lunch was a symbol of the kind of big business deals that sustain economic growth.

David Cleary
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Tavares Florida 32778

May 17, 1985

Testimony prepared for delivery to the May 21 hearing of the House Subcommittee on Telecommunications, Consumer Protection, and Finance.

My purpose here is to register five basic points about alcohol advertising and packaging, with special emphasis on its impact on young people.

Point #1: Current promotion of all leading beverage alcohol products is UNTRUTHFUL and DECEPTIVE, because it suggests that the product can be used in a carefree way with no constraints, and there are no warnings -- in the advertising or the packaging -- of any dangers of misuse.

Beverage alcohol is a drug with at least four serious health hazards:

- Alcohol is addictive.
- Alcohol should never be mixed with other drugs.
- Alcohol can be harmful to people with diabetes and heart problems.
- Alcohol can cause birth defects when used by pregnant women.

The most logical place for essential detail about these hazards is on the container. A container is a medium of communication. The user of a product is more likely to see information on the container than in any other medium.

In addition to container (label) warnings, alcohol advertising should be asked to temper its urge to drink in a carefree fashion, and should be required to carry appropriate health warnings.

Without health warnings addressed directly to the consumer, the advertising and packaging of beverage alcohol will continue to be UNTRUTHFUL and DECEPTIVE.

Point #2: On Television, the principal target of alcohol advertising is children 2-11.

When I say "target," I am not referring to what the alcohol industry says it is aiming at -- I am referring to the people being hit.

(CONTINUED ...)

Every week, according to The Television Bureau of Advertising, television reaches:

- 92% of all children 2-11.
- 91% of all women.
- 90% of all teens 12-17.
- 88% of all men.

(Media note: radio, according to Arbitron, has a weekly reach of:
- 97% of all teens 12-17.
- 95% of all men.
- 95% of all women.)

Along with the television coverage figures, please remember the companion fact that children are the most impressionable viewers. Professor Marshall McLuhan and other media analysts have been telling us for more than 20 years that the average child learns more from television than from any other single source -- and today's average child spends nearly four hours a day watching television.

Every television viewer is exposed to as many as 5,000 alcohol commercials every year.

On the electronic media, alcohol commercials have virtually automatic access to every home and every child -- and the coverage is not controllable, it is indiscriminate. The impact of alcohol advertising on television is concentrated most heavily on children 2-11.

And even children not old enough to read can understand the message of an alcohol commercial. They generally perceive the message as: "This is a happy thing to do." Or: "This is part of being a happy, successful person." Or: "This is a good way to be more popular with girls/boys." The perceptions, by design, are all positive -- and there are no warnings of any danger of misuse.

Point #3: The only purpose of advertising is to SELL SOMETHING. Advertising does its job by a) recruiting triers, b) converting triers into users, and then c) converting users into heavier/more regular users.

The frequently-heard argument that "advertising only switches users from one brand to another in an existing market" is nonsense. If it had any validity, Ford and GM would still be swapping Model T buyers and the 2-car family would not exist.

Next year will be the centennial of the proof that advertising can sell goods on a steady, predictable basis. Mail-order merchant Richard Sears proved it conclusively back in 1886.

The world's largest (and perhaps most scientific) advertiser, Procter & Gamble, has this to say: "Advertising is the most effective and efficient way to sell the consumer. Advertising can and does create new markets. It can do this more rapidly, more intensively, and less expensively than any other method of selling the consumer."

What the alcohol industry says about its advertising is contradicted, of course, by the industry's marketing actions. In its January 31/85 Special Report on Wine & Beer Marketing, Advertising Age noted: "New brands and extensions of existing brands have been appearing on retailers' shelves at a record pace *** New light beers, low-alcohol beers, low-price beers, superpremium beers and malt liquors have been coming out of the major breweries as though the industry were booming ..."

In all of those introductions, the first purpose of all promotion was to recruit triers.

Point #4: The basic ingredient of television advertising is IMAGERY, which enhances its effectiveness among children.

When an advertising agency prepares a television commercial, it usually begins by developing a prospect profile, based on both demographics and psychographics. From the prospect profile comes the choice of message, presentation technique, action, music -- and the media specifications for the target audience(s).

In trying to develop a message, the agency creative people run into an immediate "generic" problem in alcohol advertising. Alcohol is alcohol. Beverage alcohol is a liquid with such characteristics as color, carbonation, flavor, bouquet, and thirst-quenching ability -- but all beers and all wines are pretty much the same. Creative people soon turn to psychographics (lifestyle considerations) and create an action-and-music image of their product closely associated with the audience they want most to attract. This positioning of the product is more important than any facts that can be stated about it.

This kind of image approach, with no specific facts, has been used in behalf of beer (in my own experience) since 1951.

Ironically, the Federal Trade Commission has stated (statement of James C. Miller III to Senator Paula Hawkins, Feb. 7/85): "Advertisements that merely create moods or images are not susceptible to FTC law enforcement initiatives."

Without its "moods and images," television would not be television.

The mere appearance of a product on television is enough to create curiosity and a desire to try. And a child doesn't need to know how to read to get a good idea of what an alcohol commercial is trying to tell him.

Point #5: The appeals used in alcohol commercials are appeals of high interest among children.

Sports celebrities, cowboys and other folk heroes, military heroes, supermen, and animals have long been desirable elements in advertising aimed at children. Among older children and teens, sexual prowess is a highly effective appeal.

Little kids follow the examples of the big kids. Today's little boys want to grow up and be like the sports heroes, supermen, etc. -- and the yuppies they keep hearing about.

One of the earliest marketers to children (since 1904) is the Brown Shoe Company, maker of Buster Brown shoes. Early in the 1970s, Brown marketers said: "With all their television, kids of six today are smarter than they used to be at 12."

In my own experience, patriotic themes have also proved to be highly effective with children -- and the reason is both simple and obvious: the subject matter ties in with what they have learned at school -- starting with the first time they stood up and recited the Pledge of Allegiance to the Flag. I therefore think it is simplistic to believe that child appeal can be eliminated simply by eliminating sports celebrities from alcohol commercials.

* * *

In my opinion, Congress should take these actions:

1. Require appropriate health warnings on beverage alcohol containers and in beverage alcohol advertising in all media.
2. On the indiscriminate electronic media of television and radio, either initiate a ban on alcohol advertising or require equal time for health messages.

* * *

My qualifications for expressing opinions about alcohol advertising are as follows:

- Retired V.P. and partner, Young & Rubicam, Inc., now active as a marketing consultant. Y&R is the world's largest advertising agency, buys more TV time than any other agency, and has for more than 50 years been a leader in researching the effects of advertising on the consumer.
- Author of a marketing casebook, GREAT AMERICAN BRANDS: the Success Formulas that Made Them Famous -- selected by the American Library Association as one of its 1982 Books of the Year.
- Former member of the board of the Tampa Area Council on Alcoholism.

# # #

STATE OF NEW YORK
DIVISION OF ALCOHOLISM AND ALCOHOL ABUSE
194 WASHINGTON AVENUE, ALBANY, NEW YORK 12210

ROBERT V. SHEAR
DIRECTOR

May 20, 1985

Representative Tim Wirth, Chairman
Subcommittee on Telecommunications, Consumer Protection and Finance
United States House of Representatives
Washington, D.C. 20515

RE:H.R.2526

Dear Congressman Wirth:

Please include the following comments in your Subcommittee' record on H.R. 2526, introduced by Representative John F. Seiberling. This bill would require that health warnings and prevention messages be given television broadcast time equivalent to that used for advertising the sale of alcoholic beverages.

I would like to offer my comments in support of H.R. 2526. I believe the approach proposed by Representative Seiberling is the more appropriate, and more desirable alternative to a ban on alcohol advertising in this medium. It is also my belief that such a requirement is the ONLY acceptable alternative to a total ban of such advertising from broadcast television. Any lesser measures seem unlikely to protect the American public from the clearly damaging effects of the continuing unbalanced television portrayal alcohol use as universally positive and beneficial.

The current unrestricted exposure of the American people to televised images of alcohol use in association with economic success, health, fitness, and patriotism, can only enhance the dangerous misperception that alcohol use is uniformly desireable and safe, subject only to "responsible" use by the consumer. This patently inaccurate image of alcohol, is a powerful, in fact overwhelming force in opposition to the necessary efforts of government to warn the public of the hazards which are associated with the use of alcohol in certain high risk populations and situations, and in intoxicating quantities. I believe that such unlimited and unbalanced messages in support of alcohol use also contribute to an atmosphere of weakened respect for the laws of the states which control the sale and distribution of alcoholic beverages, and impede public understanding and support for efforts of government to provide help for the victims of alcohol problems.

I would wish to emphasize that I do not assert that television advertising per se causes alcohol-related problems. Rather it is my belief that the effect of high levels of positive alcohol advertising creates an inaccurate and misleading impression of the nature of alcohol and its effects. It is this misunderstanding of alcohol, uncorrected by appropriate warnings and more complete information, that creates a cultural environment that is tolerant of, and to some degree causative of alcohol problems.

Following are more detailed presentations of the three concerns referenced above. I hope these thoughts will be useful to you in the work of your Subcommittee, and will lend encouragement to your favorable consideration of this bill.

IMPACT ON EFFORTS TO PREVENT ALCOHOL PROBLEMS

Alcohol advertising emphasizes exclusively positive associations in promoting the use of alcoholic beverages creating an image of alcohol use as normal, safe, and beneficial. As the study of alcohol problems has become more advanced, it has become possible to more easily identify groups suffering from, or at unusually high risk for alcohol problems, for whom the advertising image of universal safe drinking is a dangerous, possibly life-threatening myth. It has not, however, become possible to reach these groups with needed warnings, because government and social agencies cannot afford the cost of commercial television advertising.

The high risk groups to which I refer include women who are pregnant, whose use of alcohol during pregnancy may result in irreparable damage to a developing fetus. They include Native Americans, who die from alcohol-related causes eight times more frequently than the general population. They include the children of alcoholic families, whose potential genetic predisposition to alcohol addiction places them at four times the normal risk of alcoholism even if they are raised outside of an alcoholic family environment. In the present environment of unrestricted, unanswered advertising of universally beneficial alcohol use, these populations receive the same televised encouragement of regular alcohol use that reaches the low-risk, healthy user, and the already dependent alcoholic.

Clearly the general thrust of alcohol advertising is to increase the sales of alcoholic beverages. Yet there is no question that as alcohol consumption increases in the population, so do the prevalence of numerous alcohol-related problems and illnesses. A generalized urging to the American people to drink, without efforts to contain unsafe levels of use, clearly is detrimental to the public health. Still, in the current environment, only the marketers of alcoholic beverages can afford to regularly place their message before the American people. Messages designed to discourage intoxication, or regular heavy drinking never appear.

New York State experiences in the range of $8-10 billion of the annual loss to the U.S. economy of $116 billion resulting from alcohol use. In our efforts to reduce this loss, and the attendant suffering of our people, the state is currently at work on a major planning effort to address the prevention of alcohol problems. Unless we are given the means to provide our citizens with a balance to the non-specific urging to use alcohol that is regularly broadcast into their living rooms, we have little hope of effectively reaching the public with the health warnings and prevention messages that would make continued alcohol advertising less destructive to our efforts to inform and educate the public.

IMPACT ON STATE LAWS REGULATING AVAILABILITY OF ALCOHOL

Regardless of the extent to which this effect is intended by the advertisers, high levels of unbalanced alcohol advertising clearly exert a powerful force in shaping public opinion and policy. The sheer volume, and unrelentingly positive tone of alcohol advertising has certainly helped to establish a generally favorable image for this drug in the public eye. In fact, there has been until recently a clear, continuous trend in public attitude toward more liberal treatment of alcohol availability, occurring during a historical period that has seen continuous increase in alcohol consumption, and in the prevalence of alcohol-related problems and illnesses in the United States. In most states accross the nation, this trend has been accompanied by generally relaxed restrictions on the availability of alcoholic beverages, and deterioration of the states' alcoholic beverage control activities. Were the public regularly exposed to messages that accurately represent the hazards and costs associated with alcohol use, public recognition of the need for effective alcohol controls might well have remained firm enough to avoid the continuing increase in alcohol-related problems that has persisted until very recently.

In New York State we have seen such a progressive disregard for our alcoholic beverage control laws, that their violation is widely considered normal and acceptable. It has become so common for adults to violate the legal purchase age requirements, that many communities organize efforts to subsidize the safe transportation of intoxicated teenagers, on the assumption that the laws restricting provision of alcohol to underage teenagers will be broken. Very often we have seen that such approaches have been supported by the advertisers of alcoholic beverages, such as the recent Operation Prom/Graduation sponsored by the National Association of Broadcasters. The material for that project includes a variety of suggested ideas to be supported by local broadcasters, including Dial-a-Ride programs, and a recommended speech on the subject, with one-third of its content addressed to the prevention of controls on alcohol advertising.

Parents who wish to exercise their legal right to determine if their underage children use alcohol often find their efforts thwarted by an attitude of disregard for for the state laws that protect this right. Many parents, including the one third of American adults who themselves abstain from alcohol, find themselves, their children, and their communities continuously affected by the atmosphere of liberalization that has impacted our Alcoholic Beverage Control system. When seeking to bring an end to liquor law violations by state-licensed sellers of alcoholic beverages, many communities have found their ABC structure weakened by budget cutting and inattention during the years of liberalization of alcohol controls. This erosion of public respect for and adherence to our state laws clearly has been a major factor in the increased availability of alcohol to the very young, and cannot be dissociated from the attendant problems.

As we seek to raise public awareness, particularly as we work to legally limit access of alcohol to youthful drinkers, there is little question that the image of alcohol engendered by frequent, heavy, positive advertising has made our task more difficult. The perception of alcohol use as a generally safe and harmless form of recreation, the denial of which would be an unreasonable "punishment" to young people, clearly has been a major roadblock to our efforts to raise the purchase age, and continues to interfere with our efforts to promote compliance with and enforcement of our Alcoholic Beverage Control Law.

There seems little reason to doubt that the advertising that motivates purchase of alcoholic beverages also promotes an atmosphere of acceptance of alcohol among the general public as well as policy makers. Commercials associating alcohol use with positive images that are unrelated to the product, such as the current campaigns relating alcohol use to American patriotism, provide a powerful message to citizen and legislator alike that these products have a natural place in the lives of our people. It is noteworthy that such messages are curentlty not even subject to equal time provisions under the Fairness Doctrine, despite the fact that these campaigns are being waged during a period in which the federal government is considering administrative and legislative action to limit television advertising of alcohol.

IMPACT ON TREATMENT AND REHABILITATION EFFORTS

Just as the atmosphere created by advertising affects public attitude and policy with respect to alcohol controls, the advertising portrayal of alcohol use as safe and beneficial also helps to perpetuate the myth that alcoholism and alcohol-related illnesses are the self-inflicted result of "irresponsible" use of alcohol. Because the television viewing public is almost never exposed to modern knowlege of the hereditary aspects of alcoholism, and is rarely given a message warning of the addictive properties of this drug, it is impossible to perceive through television the inherent risk of addiction in alcohol use. Lacking a means of acquiring an understanding of this risk, it is not surprising that a substantial portion of the American people persist in prejudices and misunderstanding of alcoholism and alcoholic people.

These common misperceptions help to perpetuate a social environment in which alcoholic people are exposed to discrimination and ridicule, tending to enhance denial and render more difficult our efforts at early identification and intervention. The continuing stigma surrounding alcoholism also contributes to a political environment at the local, state, and national level in which the victims of alcohol-related illnesses continue to be denied fair and equitable treatment by their social and governmental institutions. Despite progress made in recent years, many health care professionals and institutions are still reluctant to treat alcoholic people, and many insurers remain unwilling to cover treatment of alcoholism on the same terms as other illnesses. Few governments at any level support alcoholism treatment efforts in proportion to their efforts in other human service areas.

Just as it is unreasonable to expect that public policy on alcohol controls could be unaffected by the advertising image of alcohol as safe and beneficial, it is equally unlikely that public policy on the treatment of alcoholism is not similarly affected. The presentation of alcohol use as uniformly harmless and enjoyable can only support by implication the prejudice that those who get into trouble with alcohol do so through some fault of their own. Clearly this inaccurate prejudice lends an image to the alcoholic person as "less deserving" of public sympathy and assistance than those who become ill from exposure to other toxic substances whose properties are better and more widely understood.

CONCLUSION

To balance out the inaccurate and unreasonably positive image presented by alcohol advertising on television it will be necessary to assure that other messages, providing accurate and objective information also be presented. Limited amounts of documentary programming and occaisional fictional portrayals cannot sufficiently overcome the general advertising message of encouragement to drink, or the positive association of alcohol use with attractive concepts and values. By assuring adequate time be made available on television for appropriate health warnings and prevention messages, H.R. 2526 will make it possible for the millions of children and adults who watch television to be exposed to the information they need to safely use or avoid alcoholic beverages. Unless such a measure is passed by the Congress, there appears no alternative to a complete ban on television advertising that will assure the necessary protection of the public.

Sincerely,

Robert V. Shear